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FEDERAL COLLECTION OF INFORMATION ON FOREIGN INVESTMENT IN THE U.S.

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

FEDERAL COLLECTION OF INFORMATION ON FOREIGN INVESTMENT IN THE UNITED STATES

MARCH 24, 1988

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FEDERAL COLLECTION OF INFORMATION ON FOREIGN INVESTMENT IN THE UNITED STATES

THURSDAY, MARCH 24, 1988

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m., in room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Loretta Dunn; Sally Susman professional staff members; and Mark Farrell, minority professional staff member.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Good morning. We will ask that everyone please be seated.

This morning the Commerce Committee meets to hear testimony on a subject of growing importance in these days of increasing global economic competition—foreign investment in the United States.

Foreign assets in the United States total more than $1.5 trillion. But that's about all we know for sure. Our method of collecting this data is haphazard at best. Sixteen federal agencies collect information on foreign investment, and most do not coordinate their efforts. And, the lead agency in collecting this data, the Commerce Department, is actually prohibited by law from sharing its findings with other agencies.

Consequently, the information available to Congress and the American people is sparse, piecemeal, and untimely. In this new global economy, we need solid data to guide us as we plan for our economic future. But what we're getting is barely worth the paper it's written on.

We've got colossal trade deficits. We're exporting our jobs and our industrial backbone. And now we've become a net debtor nation for the first time since 1914—$400 billion in the red at the end of last year and a projected one trillion dollars by the end of the decade.

Well, if our leaders are content to stand idly by while our nation goes into hock to the rest of the world, this Senator is going to make sure we know whose holding the deeds. I want to know which nations are buying us out and I want a reliable system to provide solid information.

Many other nations require registration. Why not us?

And the American people agree that registration should be required—by some 89% in a recent poll. I can't help but chuckle to myself when I see that in a second "targeted elite survey" of 100 public officials, business leaders, and media figures, only 48% backed a registration requirement. They're probably the same 48% who think this Administration has a good trade policy. Let's face it, some of the folks on Wall Street are making a killing in this situation. Do these people care about anything besides making money?

It has been argued that requiring foreign investors to register with our government would somehow drive badly needed foreign capital away from our market. I don't see this happening in other nations that have such laws. I think we ought to have a little more confidence in our market.

Today we will hear comments on pending legislative prroposals to place reporting and disclosure requirements on foreign investors. One such provision is contained in the House trade bill—section 703, the Bryant amendment. This has surfaced as one of the must controversial issues in the trade conference.

Today's hearing is the fulfillment of a commitment I made last July to Senator Harkin who, at that time, had offered an amendment to the Senate trade bill requiring foreign investors to register certain information with the Department of Commerce. I made the motion to table his amendment on the Senate floor for two reasons. First, the leadership on both sides had made an agreement to table all amendments, as the time left on the trade bill was very short. Second, I am very interested in the direction of our national policy on foreign direct investment and I believed a matter of this importance deserved a full and fair hearing.

Senator Harkin joins us today to present testimony. In addition, we have an impressive list of experts from government, academics familiar with current data collection procedures, and representatives of the business community on both sides of the debate on registration requirements.

I am anxious to hear the different viewpoints on this issue, and I look forward to a productive and educational hearing.

I have opening statements from Senators Kasten and McCain that I will include in the record at this point.

[The statements follow:]

OPENING STATEMENT BY SENATOR KASTEN

Thank you, Mr. Chairman. The hearing today will present the testimony of distinguished witnesses on both sides of the debate over the necessity of additional federal collection of information on foreign investments. I say "additional" because sixteen federal departments or agencies are already collecting such information, with the Departments of Treasury and Commerce obtaining the bulk of the information. Further, our securities laws require that foreign investors, just like domestic investors, must disclose publicly ownership of over 5% of public companies.

The arguments against further regulation or legislation in this area include the chilling effect that it would have on this type of investment that has done much to employ Americans and keep capital costs down. Also, it seems to me such proposals for further information gathering will jeopardize treatment of U.S. investments abroad and undermine our efforts to eliminate foreign barriers, while producing no useful information not already available for our policy-making decisions.

This committee has looked at the particular need for further reporting and control of foreign investments in sensitive national security industries last year. We

should stay alert to such areas where remedial measures may need to be taken, however, I don't believe the proposals before us are wise or necessary.

Mr. Chairman, I am also a member of the Budget Committee and we, too, have been looking into this question. We have a number of distinguished witnesses here today, but I would also ask unanimous consent that the statement of James Powell, which was given in the Budget Committee just this week, be made a part of the record of this hearing as well. Mr. Powell opposes public disclosure.

Thank you, Mr. Chairman, and I look forward to hearing the testimony of the witnesses before us.

OPENING STATEMENT BY SENATOR MCCAIN

Mr. Chairman, I would like to commend you for holding this hearing this morning. I am grateful for this chance to hear this debate, and to comment on the issue of foreign investment in our country. As we all agree, it is becoming an increasingly significant and emotional one.

There is no doubt that foreign investment of the magnitude we are now experiencing—and can anticipate into the 1990's—has raised questions about our vulnerability to political pressure from abroad; our dependency on foreign capital; and potential national security risks. For this reason I share the concern of many in this room about these issues.

But I believe that—before we begin to tackle these questions with aggressive action that may have harmful and irreversible consequences—we have to determine whether the answers to them require remedial new legislation or augmentation of current disclosure statutes and investment restrictions. Only then can we adopt a specific, coherent, and pragmatic policy to address them.

In my view, the proposal before us neither identifies problems nor sets a clear cut policy for tackling them. Instead, it is a dangerous proposal which will open a Pandora's box, the contents of which could very easily handicap our economy. In my view, if this proposal is enacted, we will be using a shotgun before having taken the time to pinpoint the target at which we must aim. We may in the process solve some very troubling problems, but we certainly cause many more.

As far as I can tell, the Bryant/Harkin proposal requires enough new information, especially from private companies, to burden heavily foreign investors with disclosure requirements and to deter them from investing, but the information it does require does not add significantly to the debate.

It does not seem worth gathering this marginal information at the risk of curtailing the flow of foreign capital to the United States on which we are dependent for lower interest rates. I would remind my colleagues that increases in interest rates during the months preceeding October 19th were proximate causes of the stock market's breathtaking crash.

To make matters worse, by adopting this proposal we also risk foreign retaliation; we will hurt U.S. companies overseas; and lose the jobs that have been created because of foreign capital. I know that many Members have already made these points this morning, but they bear repeating.

The Bryant/Harkin proposal is based on reasonable concerns, a few of which I have already mentioned. Nevertheless, it's seeming simplicity and innocence are less likely to make any tangible improvements in the manner we approach the issue of foreign investment than to act as symptomatic relief for the emotions our newly acquired status as net debtor has evoked. It acts as salve for the pain we feel when we see our favorite companies, like Howard Johnson's—the landmark for hungry Americans—are gobbled up by foreigners, or, more to the point, when we learn how much real estate the Japanese have purchased in L.A. or Manhattan.

The ultimate effect of this proposal will be to cut down on those investments, and perhaps, deep down, what we all want is to cut down on foreign investment.

I submit to those who wish to slow or turn the tide of foreign investment, there are two ways of doing so. We can either use the symptomatic approach that will result in other serious and harmful symptoms by adopting legislation such as this. Or we can cut our federal budget deficit. I deeply hope we will opt for the latter alternative.

The CHAIRMAN. Our first witness this morning is our distinguished colleague from Iowa, Senator Tom Harkin, the cosponsor of the Bryant amendment. I understand Congressman Bryant will be right along. Senator, we are very pleased to have you this morning, if you have a statement, it will be filed in its entirety in the record.

Senator HARKIN. I do not have a formal statement, Mr. Chairman, I just want to hit on a couple of points.

The CHAIRMAN. Very good.

Senator HARKIN. I see Congressman Bryant is here too now.

The CHAIRMAN. We welcome Congressman Bryant, the principal author of the bill, to the committee. And we will be glad, Senator, to hear from you at this time.

STATEMENT OF HON. TOM HARKIN, U.S. SENATOR FROM IOWA

Senator HARKIN. Mr. Chairman, thank you very much for having this hearing on foreign investment in the United States and on S. 1697, which is the Foreign Investment Disclosure Act, a bill I've introduced to improve monitoring of such investment.

Paul Krugman, an M.I.T. economist recently suggested that the political issue of the 1990s is going to be the foreign invasion of the U.S. While Professor Krugman's characterization may be overstated, he is on his mark in his assessment of the growing economic and political importance of foreign investment issue.

In the last five years, Mr. Chairman, foreign ownership of U.S. assets has tripled to $1.5 trillion. That inflow ranks as one of the greatest financial transformations of the post-war era. And as you know it has turned us from the world's largest creditor nation into the world's largest debtor nation.

To the average American this means that many American brands no longer are. Carnation is now owned by Nestle. Standard Oil of Ohio is owned by British Petroleum. The supermarket A&P, is owned by the Germans. And now when we buy our hamburgers from Hardee's and ask where's the beef, * * * from, we get an answer, from Canada.

This foreign investment boom signals a dramatic shift in our economic role. In the short run, the influx of foreign capital has financed the budget deficits, kept inflation down, halted an even more dramatic decline in the dollar, helped create jobs and financial opportunities. But we have not begun to consider the potential long-term impact.

Felix Rohatyn calls the growth of foreign investment an "addiction" whose withdrawal could produce convulsion in our domestic economy. As Senator Proxmire said, with greater dependence on foreign investors, you lose part of your sovereignty and you lose your independence.

And, Mr. Chairman, I have talked to many of my colleagues who have gotten phone calls and letters from different constituents who now work for a foreign-owned company urging their support for particular provisions based on the foreign investment that we now have either in our congressional district or our state. It has happened to this Senator already. Because of a foreign-owned company in my state, I have received calls to oppose and amendment to the trade bill, even though I think most of my constituents might support it. And again, you wonder about that kind of influence that comes in our political system.

We don't know the full extent of foreign investiment in the United States. For this reason, I have introduced S. 1697 "The Foreign Investment Disclosure Act.

The purpose of the bill is to require all foreign investors who acquire more than 5 percent of a U.S. business enterprise or U.S. real estate to provide basic information about themselves and the investment to the Department of Commerce. We want to know who they are from and where they are from and how much they own. If they have a controlling interest—that is, more than 25 percent—we want the same information that our own publicly traded companies are required to disclose.

The bill is a very modest proposal. We are not trying to discourage foreign investment. We have no restrictions, no preconditions, no pre-clearance requirements of any kind. All it requires is simple disclosure: who are you, where you are from, how much are you investing. And if you have a controlling interest—of over 25 percent we want the same kind of information now required of a publicly held company.

There was some misconceptions early on that this bill covers Treasury bonds and other debt instruments. That is not so. This bill only covers real estate and businesses in this country. It does not require disclosure on any debt instruments.

Mr. Chairman, today you will hear that this bill will have a chilling effect on investment. Well, I don't buy that. If disclosure is so bad, then why have Americans invested $82 billion in Japan where not only do you have to disclose, but there are pre-clearance requirements? If disclosure is so bad, why have Americans invested $281 billion in Latin America where almost every country requires disclosure and pre-clearance? In Canada, where they not only have disclosure, but pre-clearance, Americans have invested $127.4 billion in that country.

In 1980 the House Government Operations Subcommittee found seven primary reasons, after extensive hearings I might add, for foreign direct investment in the United States. Economic return and stability topped the list. That is why countries invest in the United States—economic stability and economic return. Anonymity wasn't even on the list. It didn't even make number 7. Mr. Chairman, it is just really a red herring to say that there will be a chilling effect on the investments. Investment continues elsewhere in the world where they require disclosure or even in countries where they require pre-clearance.

American dependence on foreign capital may, as Felix Rohatyn recently said, pose such a threat to our national security that we should start looking at where it is coming from and how much it is. We are not calling for pre-clearance. But if in our roles as Senators and Congressmen, we intend to make good public policy—and I don't mean just reactive public policy then we must have the information.

We may wish to do nothing with the information. But if we don't know about the extent of foreign investment, how can we form practical public policy in this country dealing with what many think may be a real threat? Today, we don't know the extent of it. We don't know where it is coming from. We don't even know how many drug dealers and how much drug money is being laundered and coming into this country to buy real estate and businesses. If nothing else, one sound reason for this bill is to keep the drug people from laundering their money in this country. With my bill

they will have to disclose who they are, and I don't mean just the front companies, but who the ultimate beneficiary is.

We need this information so that we can make sound public policy. Thank you.

[The following information was subsequently received for the record:]

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COMMITTEES:
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SMALL BUSINESS
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United States Senate
WASHINGTON, DC 20510

May 3, 1988

The Honorable Ernest F. Hollings
Commerce Committee
United States Senate

Dear Mr. Chairman:

I would like to thank you for the Commerce Committee's hearing on Federal Collection of Information on Foreign Investments in the U.S. This hearing provided an excellent forum for a thorough discussion of the foreign investment issue. I also appreciate the cooperation and assistance offered by your staff, particularly Loretta Dunn and Sally Susman, in preparing the March 24 hearing.

The following are responses to the questions you raised in your letter of March 31:

1. I see that your amendment is different from the version that passed in the House. Please explain the significance of those changes.

The differences between S. 1697, the Foreign Investment Disclosure Act, and the amendment added to the omnibus trade bill by Congressman John Bryant can be characterized as clarifications or modifications, but not significant changes to the House-approved provision. These modifications preserved the original intent of the Bryant amendment but made the Senate bill less intrusive than its House counterpart.

The differences include --

- S. 1697 covers foreign-held equity or ownership interest exceeding five percent in a U.S. real estate property with U.S. assets exceeding $5 million or annual sales from the U.S. exceeding $10 million, or in a U.S. real property exceeding $5 million. The Bryant amendment, while covering the above interests, also covers ownership or equity interests of five percent or less, if the interest was valued at more than $50 million (in a U.S. business) or $10 million (in a U.S. real property).

- As a measurement of significant interests, the Harkin bill uses the market value of the U.S. real property or of the assets of the U.S. business. The Bryant amendment uses the purchase price of the interest the foreign person or entity acquires.

- For controlling interests, the Bryant amendment requires disclosure of all financial information publicly filed in the foreign person's home country. The Harkin bill requires only selected information, such as a company's balance sheet and income statement, the location of U.S. facilities, and a statement of sales, assets, operating income, and depreciation by industrial segment.

- The Harkin bill provides for less restrictive filing deadlines and penalties from those required by the Bryant amendment.

I have enclosed a summary of the major differences between the two provisions.

2. Have you received any support from the business community for your amendment? If not, why do you think they oppose it?

The foreign investment issue has drawn the attention of members of the business and financial community. In the January 25, 1988 edition of Forbes, Malcolm S. Forbes, its Editor-in-Chief, called for the creation of a "Board of Knowledgeables" to review and possibly restrict

foreign purchases of major U.S. companies. Financier Felix Rohatyn recently suggested that American dependence on foreign capital may pose such a threat to our national security that we may soon find it necessary to establish a legal mechanism to review foreign acquisitions in certain industries.

My legislation does not call for either alternative. Rather, S. 1697 merely requires basic disclosure to track the precise levels and sources of foreign investment in the United States.

Opposition to S. 1697 comes from two primary sources -- the Reagan Administration (particularly the Treasury Department) and foreign investors and domestic businesses with significant foreign investments.

Opponents argued that the proposal could staunch the flow of foreign investment that has been crucial to the nation's economy. Implicit in their argument was the assumption that disclosure would deter legitimate investment and that disclosure leads to restrictions on foreign investment.

The record disproves the first point. In 1980, a House Government Operations Subcommittee found seven primary reasons for foreign direct investment in the United States. Economic return and stability topped the list. Anonymity was not even on it.

Second, the Harkin-Bryant proposal requires only disclosure of the same information now required of publicly-traded companies. It does not attempt to restrict foreign investment; it requires the information necessary for policymakers to assess and analyze the impact of foreign capital on the U.S. economy. Much misinformation has circulated regarding this proposal, and I appreciate the opportunity to correct the record on this disclosure requirement.

3. Why, in the face of significant opposition, did you decide to go forward with this amendment to the trade bill?

Since offering S. 1697 as an amendment to the omnibus trade bill in July 1987, I have been informed that the disclosure provision was the most lobbyied against amendment of any amendment to the trade bill. According to Susan and Martin Tolchin in Buying into America, "the list of lobbyists in the coalition against the amendment read like a **Who's Who** of foreign and American multinationals, business trade associations, and blue-chip Washington law firms."

I firmly believe that the issue of foreign investment is potentially too important, and our current information on the matter too limited, for the Senate not to debate the issue and for the American public not to be informed about it. Public debate on an issue of such potential importance to American economic security should not be determined by the intensity of lobbyist pressure.

I would like to address the question of the margin of the Senate vote on the motion to table the Harkin disclosure amendment. I believe that the vote did not accurately reflect the level of Senate opposition to the issue. As one Senate staffer is quoted the Tolchins's book, the amendment got caught in the "atmospherics" of the trade bill. Several members, while expressing interest in the issue, mentioned that hearings had not been held on the proposal, and stated they wanted more time to study the issue.

Offering the amendment marked the first step in raising to the Senate an issue that will continue to attract public attention, particularly as foreign investment in our economy increases.

The Senate Commerce Committee hearing will play an important role in addressing the foreign investment issue. I commend you, Mr. Chairman, for scheduling the hearing and for your interest in this matter. I look forward to working with you in the future on this and other issues.

Sincerely,

Tom Harkin

Tom Harkin

DIFFERENCES BETWEEN HARKIN BILL AND BRYANT AMENDMENT

I. Foreign-held interests covered

A. Harkin amendment:

Any equity or ownership interest exceeding five percent in a U.S. real estate property with U.S. assets exceeding $5 million or annual sales from the U.S. exceeding $10 million, or in a U.S. real property with a value exceeding $5 million. No debt interests included.

B. Bryant amendment:

Also covers ownership or equity interests of five percent or less, if the interest was valued at more than $50 million (in a U.S. business) or $10 million (in a U.S. real property).

II. Contents of registration

A. Harkin amendment:

--For significant interests, the market value of the U.S. real property or of the assets of the U.S. business.

--For controlling interests, with respect to the foreign person, an English translation of any of the following information already publicly filed in foreign person's home country--

--balance sheet and income statement;

--statement of changes in financial condition;

--statement of sales, assets, operating income, and depreciation by industrial segment;

--location of U.S. facilities;

--identity and nationality of directors and executive officers, compensation of executive officers, and related business transactions of any director;

--description of significant civil litigation in which involved with past year.

--For controlling interests, with respect to the U.S. business, changes in financial condition only for business a a whole. Auditor's statements required only if already prepared.

B. Bryant amendment:

--For significant interests, the purchase price of the interest the foreign person acquires.

--For controlling interests, with respect to the foreign person, an English translation of all financial information publicly filed in foreign person's home country.

--For controlling interests, with respect to the U.S. business, changes in financial condition broken down by operating segment. Auditor's statements required.

III. Civil Penalties

A. Harkin amendment:

$10,000 per week late, not to exceed value of the interest.

B. Bryant amendment:

$10,000 per week late.

IV. Timing, effective dates, deadlines

A. Harkin amendment:

--additional financial information for controlling interests 180 days after initial registration (210 days after acquisition);

--inventory compiled 1 year after regulations prescribed (545 days after enactment);

--civil penalties take effect 365 days after regulations prescribed (545 days after enactment).

B. Bryant amendment:

--additional financial information for controlling interests required 180 days after acquisition;

--inventory compiled 180 days after regulations prescribed (360 days after enactment);

--civil penalties take effect as soon as regulations prescribed (180 days after enactment).

The CHAIRMAN. Very good, Senator. We will withhold questions for a moment now and hear from the distinguished Congressman.

STATEMENT OF HON. JOHN W. BRYANT, U.S. REPRESENTATIVE FROM TEXAS

Mr. BRYANT. Thank you very much, Mr. Chairman. I want to express my sincere gratitude to you for holding this hearing today on a very important issue.

I think Senator Harkin has very well stated already the basic case for disclosure. It is very clear to me that we have at least in the last seven years been exchanging our economic sovereignty in return for what may or may not have really been prosperity—we have exchanged authority over vital economic decisions affecting our jobs in America, our business goals, as well as our future prosperity.

I don't think it is very difficult to make a case for why we should be concerned about this area. Excessive foreign ownership in our high tech industries could narrow our strategic and competitive edge. Excessive foreign ownership in our energy and defense related industries could endanger our national security. Clearly, foreign domination of the banking industry could raise some serious questions about our ability to control our future.

I think it is also important to observe that the magnitude of these investments has resulted in increased foreign influence in U.S. economic policymaking and U.S. economic/political decision making, which was alluded to graphically just a moment ago by Senator Harkin.

This surge of foreign capital is the greatest change now taking place in our economy, but it is one that we are ill-equipped to comprehend. The reason for that is that unlike other nations, we do not require disclosure of basic information on foreign ownership in this country in a form that is useful for sound analysis or informed decision making.

You are going to hear from other witnesses today that the United States already collects enough information on foreign own-

ership here through legislation with such confidence-inspiring titles as the International Investment Survey Act, the Foreign Agricultural Investment Disclosure Act, and so forth. And I would like to explain to you just briefly why the best of the information that is currently available is basically of no use to policymakers.

The Department of Commerce has two sources of data on foreign ownership. The first is the Office of Trade and Investment Analysis. In its publication, which I have here in my hand, they will present a long list of foreign investments by name. All this is is a compilation of newspaper stories and other already published sources. The Government Operations Subcommittee study carried in 1980 by the late Chairman Rosenthal concluded that this was an all but useless activity done primarily for public relations to give the impression of a systematic and reliable method of collecting data.

The Department of Commerce also houses the Bureau of Economic Analysis which does systematically collect data on foreign investment in U.S. businesses under the authority of the International Investment Survey Act. But the Bureau of Economic Analysis keeps that data completely secret, even from Members of Congress, and it publishes only aggregate statistics which are of no use to analysts. I have a copy of that report here as well. Not only is it kept secret, even in the aggregate data you will quite often find the notation "D" where the figure should be which means that the data are not going to be released even in aggregate form because of fear that information about the specific owner of the investment will be made clear.

BEA not only keeps the information completely confidential; does not request the identities of the individual ultimate foreign owners. In other words, even with the data they do collect, they cannot be sure who the ultimate beneficial owner of the asset is which means, of course, they cannot determine who is controlling that asset.

Their aggregate statistics are as well demonstrably incomplete. The Commerce Department itself acknowledges today a so-called statistical discrepancy in the figures it has collected for 1981 through 1987 which indicates that this agency believes it has completely missed at least $223 billion in foreign capital entering the United States. Other estimates of this ignorance gap are much higher.

I would also refer to the report of the Government Operations Committee by Chairman Rosenthal of 1980 in which they pointed out that their committee compared BEA aggregate figures with other data collected anecdotally or through testimony to the committee indicating that there were substantial assets in this country which had completely eluded BEA. In fact, 23 OPEC investments in this country by their nature and size could not possibly have been included in the aggregate data which the Bureau of Economic Analysis held out to be a complete representation. The point is it is not accurate, nor is it verifiable.

I do not think it is any secret that administrations of both parties over the years have been tempted occasionally, to put it in the best possible words, to put the best light on unemployment figures, on economic projections, and this category of information collection

would be no different. There is no way to check what they do because it is kept secret even from Members of Congress. So, we don't know whether what they have is correct or not. We do know that even what they present to us as being correct, they must admit, is substantially out of line with what the facts probably are.

We also have the Agricultural Foreign Investment Disclosure Act which requires reporting of the owner of agricultural lands in our country. But once again, there is no requirement that the true, ultimate beneficial owner be listed. So, we really don't know who owns these lands at all. I have listed an example in my written testimony that they list 270,000 acres of Texas agricultural land owned by residents of the Netherlands Antilles, which would be one acre for every man, woman and child who lives in the Netherlands Antilles. Obviously, those are held in the name of dummy corporations.

And fourth, I would point out that the Securities and Exchange Commission requires reporting when any investor acquires over 5 percent, but their data is listed by the name of the corporation. If you were to try to gain any information about concentration of foreign ownership in any area of economy from the SEC data, you would have to go through every single corporation by name. And accordingly, it is of no use because it is not organized in a central fashion to provide us the kind of data that we would like to have.

I think it is fair to say today that the energy with which the foreign investment lobby has fought this very modest proposal that I have made and that Senator Harkin has made is surprising. And I think the tactics that the administration has used in joining their efforts is nothing short of astounding.

Secretary Baker has said that the provision by itself would be enough to compel the President to veto the trade bill. Just a few days ago Assistant Treasury Secretary Robert Cornell told the House Commerce subcommittee that the provision was "without precedent anywhere in the world," a statement which is patently incorrect and untrue.

Accordingly, many people as a result of their lobbying effort now assume that the provision that we have championed must contain some onerous investment restriction or impediment. The truth is just the opposite. It contains no restriction and no impediment, as anyone who takes time to read it will quickly see. We would still have by far the most open-foreign investment policy in the world, in stark contrast to other nations, some of which Senator Harkin made reference to a moment ago.

I would point out that Japan, whose multinationals are opposing vigorously this simple reporting measure, flatly prohibits foreign ownership of more than 50 percent in energy companies or 25 percent in high technology companies. Their agencies pre-screen our investments. And based on the comments from the Japanese competitors, they decide whether or not to deny or alter investments that they determine might harm the national security, disturb the public order or hamper public safety, adversely or seriously affect Japanese companies, or adversely affect the smooth operation of the national economy. That's Japan. I could go on as well about even England and Switzerland who are frequently referred to as good examples very open to foreign investment.

For many countries, the restrictions are hidden in areas that we would not suspect. A Commerce Department official advised my office that the only way an American investor can find out about the investment restrictions in a particular European country—whose ambassador to the United States, by the way, has been personally lobbying against this proposal—was to hire a lawyer, try to make the investment, and see what he runs up against. That is all that commerce knew.

I would point out to you that simple reporting, such as Senator Harkin and I have proposed, is not a restriction. It is not recognized as a restriction by other nations in the world. In fact, quite the contrary, it is internationally recognized as a completely different animal by the Organization for Economic Cooperation and Development, which is the organization composed of the major Western industrialized nations and Japan.

In the 1984 "Declaration and Decisions on International Investments", to which the United States is a signatory as part of this organization, the organization called for foreign-owned companies to register and publish the very kind of information that this amendment calls for. In other words, the U.S. Government has agreed in the international community to the very disclosure requirement that the Reagan Administration today is vigorously opposing. I have a copy of that in my hand here in the event anyone would like to take a look at it.

I think it is fair also to make reference today to the U.S.-Canada Free Trade Agreement, which is now before this committee, and which the administration is enthusiastically urging Congress to approve. It endorses and ratifies the continuation of the Canadian government's registration and review process for foreign investments there. If that agreement is adopted by our country, Canada will with our government's official blessing not only continue to require the same reporting in Canada that my amendment calls for here, but will also continue its pre-screening and other restrictions in the full range of Canadian industries. And by that, I'm talking about the ability to prohibit investments.

I have distributed, along with my testimony to the committee, a report prepared by the Library of Congress which documents that the items that the Harkin-Bryant proposal calls for are all required by the Canadian government and will continue to be required by them under the proposed Free Trade Agreement.

Now, this chart over here summarizes that comparison, item for item, and clearly shows that Canada requires more disclosure than our proposal requires, not to mention Canada's pre-clearance requirements, the right to prohibit an American investment there and other restrictions. I submit to you that it is very difficult for me to understand how the administration could be lobbying at full throttle for approval of the Canadian Free Trade Agreement that specifically, explicitly endorses these kinds of provisions in Canada while coming before this committee and the Members of Congress individually and urging them to turn down a simple disclosure provision that has been proposed by Senator Harkin and by me.

I am disappointed that Secretary Baker has declined to come here personally to explain that discrepancy or that contradiction. I am sure you are going to have an opportunity in a moment to ask

whoever he has sent here why the administration has hailed as a milestone for free trade this agreement, while at the same time condemning a much, much less strict provision for our own government.

I think it is fair to say that if this proposal by itself is enough to compel the President to veto the trade bill, then surely we should raise some questions about whether or not to approve the Canadian Free Trade Agreement as long as it stands the way that it stands at the present time.

Let me just make a few final comments. I have probably gone on too long already.

I think it is fair for us to ask in this country if there is a line beyond which it is not in our economic interest to have foreign ownership of a particular industry. I think it is fair for us to ask if foreign control in that industry, beyond some point, begins to endanger our economic sovereignty, our ability to control our future, and our national security.

Major OPEC acquisitions are reported or rumored to be taking place in the U.S. petroleum exploration and refining industries at bargain basement prices at the present time. Based upon news reports, Saudi Arabia is in the process of buying Texaco refineries. British Petroleum owns Standard Oil of Ohio, holder of the lion's share of Alaska's 5 billion barrel Prudhoe Bay oil reserve. The Kuwaiti government, which in 1982 bought the multi-billion dollar Santa Fe International Energy Company, reportedly has been buying British Petroleum stock at a rapid pace, and now owns as much as 28 percent of it.

The point is that the American company on which J. D. Rockefeller built his fortune may soon be in the hands of an OPEC nation. I don't raise that alone as an argument for this provision. I simply point to it as a reason why common sense would tell us that we need accurate data about what is going on with regard to foreign ownership in this country.

A second question, how much foreign influence is taking place in the American electoral process. How do we guard against a de facto return to the infamous days of 1972 in which money was funneled to President Nixon's campaign anonymously from abroad? Now, we amended the Federal election law in 1984 to stop that, but it is fair I think to quote ex-commissioner Thomas Harris from the Federal Election Commission who said that it is not currently possible for the FEC to determine whether the political action committees are taking directions from abroad because it is impossible even to determine which U.S. companies with PACs are foreign-owned.

And I think you are going to hear later on today from the Tolchins, Martin and Susan Tolchin, whose book, Buying into America, is of current interest, some anecdotal information about the fact that in some cases political action committees made their choices about which candidates to support after consulting the head office overseas about their particular predilections in that regard. I will leave that explanation to them.

Finally, when is foreign investment creating jobs and when is it displacing them? Three Members of the House have asked the General Accounting Office to focus on these questions in an examination of foreign investment in the U.S. auto and auto parts indus-

tries. The final GAO report will not be released for another two weeks. But GAO investigators working on it have told my office personally that the lack of reliable data has severely handicapped their efforts to answer these questions meaningfully. They have had to rely almost exclusively on interviews with auto union officials and auto executives.

I think I have made the case. Let me just conclude by saying this. I am certain that emotional demands are going to be made upon this Congress to make policy in this area. The public opinion poles recently indicate that 78 percent of the American people favor legal restrictions on foreign investment, which we do not propose here today. And 40 percent want the government to ban further foreign investments altogether, which we do not propose here today. And you can look at the comments by Felix Rohatyn and by Malcom Forbes recently, comments which I don't necessarily endorse at this stage before we have data, but I think that it is very clear that those demands are going to be made.

If there are going to be emotional demands on Congress to act in this area, Senator Harkin and I are simply saying that we ought to have the data on which to base public policy decisions. We don't have it today. If Congress is not equipped to make sound policy judgments based on reliable information, we will be left at the mercy of textbook theory, anecdote or emotionalism. I believe that would be very regrettable.

I appreciate the opportunity to come and express my views.

[The statement follows:]

SECTION 703 OF H.R. 3 AND THE REGULATIONS TO THE INVESTMENT CANADA ACT

SUMMARY

Section 703 of H.R. 3 would require foreign persons acquiring or holding a "significant interest in a United States property" or "a major portfolio interest in a United States business enterprise" to identify themselves and furnish the Secretary of Commerce with certain types of basic information relating to their investments.[1] Section 703 of H.R. 3 would also require foreign persons acquiring or holding a "controlling interest in a United States business enterprise" to furnish the Secretary of Commerce with certain types of more detailed information relating to their investments.[2]

The Regulations to the Investment Canada Act require non-Canadians to identify themselves and furnish the Investment Canada Agency with certain types of basic information respecting their "non-reviewable" investments.[3] The Regulations to the Investment Canada Act also require non-Canadians to furnish the Investment Canada Agency with certain types of more detailed information respecting their "reviewable investments.[4]

The circumstances in which foreign investors would have to provide the United States Government with information under section 703 of H.R. 3 are not identical to those in which foreign investors are presently obliged to provide the Canadian Government with information under the Investment Canada Act. However, the types of information encompassed by section 703 are generally very similar to, if not quite as extensive as those encompassed by the Regulations to the Investment Canada Act.

INVESTMENT CANADA

Longstanding concern over adverse effects that were thought to result from the very high level of foreign investment in the country caused the Federal Government

[1] H.R. 3, 100th Cong., 1st Sess., §§ 703(a)(1)(A), 703(a)(2), and 703(c) (1987).
[2] *Id.* §§ 703(a)(1)(B) and 703(d).
[3] 1985 S.O.R., No. 611 § 5 (*See* enclosed photocopay).
[4] *Id.* § 6.

of Canada to appoint a Task Force on the Structure of Canadian industry in 1967.[5] This Task Force recommended the creation of an agency to monitor and screen future foreign investments. Parliament responded to this proposal by passing the Foreign Investment Review Act in 1973.[6] Under this statute, the newly created Foreign Investment Review Agency as given broad powers to gather information from foreign investors and to block any of their plans to either takeover extant Canadian businesses or establish new businesses in Canada that did not promise to confer a "significant benefit" upon the country.[7]

From the moment it was created by the Liberal Government of former Prime Minister Trudeau, the Foreign Investment Review Act had many Canadian detractors. These critics were almost unanimously of the opinion that the subjecting of foreign investments to an approval process was needlessly deterring foreigners from bringing needed capital into the country.[8] The Progressive Conservative Party was particularly critical of the Foreign Investment Review Agency's work during the general election campaign of 1984. When Prime Minister Mulroney took office in September of that year, he immediately set out to reform Canada's screening process. In June of 1985, the Foreign Investment Review Act was repealed and replaced by the Investment Canada Act, [hereinafter referred to as "the I.C.A."] [9]

Under the I.C.A., acquisitions of Canadian businesses [10] by non-Canadians [11] are reviewable if the assets of the business being acquired are worth Can$ 5 million or more.[12] In the case of acquisitions of Canadian businesses through the acquisition of a foreign parent, this threshold is raised to Can$ 50 million or more.[13] The only other type of a proposed takeover of a Canadian business that requires approval is one that is prescribed by the Regulations to the I.C.A. to relate to Canada's "cultural heritage or national identity." [14] At the present time, the only industries so prescribed are those involved in publishing and those involved in producing films, videos, and recordings." [15]

Foreign investments made for the purpose of establishing a new business in Canada are also reviewable under the I.C.A. when they relate to Canada's "cultural heritage or national identity." [16] However, foreign investments made for the purpose of establishing a new business in Canada are no longer reviewable because they involve sums above a certain threshold.

The I.C.A. directs the Investment Canada Agency to approve all foreign investments except those that do not promise to confer a "net benefit" upon Canada.[17]

Although the enactment of the I.C.A. has greatly curtailed the pre-1985 review process in Canada, it has not eliminated the information-gathering function of what used to be the Foreign Investment Review Agency. Under section 12 of the act, non-Canadians are still required to notify the Investment Canada Agency within thirty days of either acquiring an extant Canadian business or establishing a new business through a non-reviewable transaction.[18]

THE FREE TRADE AGREEMENT

Chapter 16 of the recently-concluded United States-Canada Free Trade Agreement is devoted to the subject of bilateral "Investment."[19] If this treaty is approved in both countries, the Federal Government of Canada will be required to significantly modify the Investment Canada Act by creating special rules for United States investors. The most notable of these changes envisioned by the Agreement are: 1) a raising of the threshold for review of direct acquisitions by United States investors from U.S.$ 25 million to U.S.$ 150 million over the first three years the pact is in force; and 2) the complete phasing out of reviews of indirect acquisitions by United States investors over the same period.[20]

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[5] Foreign Investment in Canada, para. 5,001 (1988).
[6] 1973–74 Can. Stat. 619.
[7] *Id.* at 620.
[8] *Supra* note 5, at paras. 5,001–5,005.
[9] 1985 Can. Stat. 419.
[10] *Id.* at 420.
[11] *Id.* at 421.
[12] *Id.* at 428.
[13] *Id.*
[14] *Id.* at 429.
[15] Investment Canada Regulations, 1985 S.O.R., No. 611, Sched. 4.
[16] Investment Canada Act, 1985 Can. Stat. 429.
[17] *Id.* at 432.
[18] *Id.* at 426.
[19] The United States-Canada Free Trade Agreement was signed on January 2, 1988.
[20] *Id.* Annex 1607.3.

The Free Trade Agreement does not contain any provisions that would require the Federal Government of Canada to amend the notification rules contained in the I.C.A. and the Regulations to the I.C.A. Therefore, as matters now stand, Canada will be able to continue to required United States investors to notify the Investment Canada Agency of their non-reviewable investments in Canada after the treaty comes into force on January 1, 1989.[21]

SECTION 703 OF H.R. 3 AND THE FREE TRADE AGREEMENT

Article 1604 of the Free Trade Agreement states as follows:

1. Each Party may require an investor of the other Party who makes or has made an investment in its territory to submit to it routine information respecting such investment solely for information and statistical purposes. The Party shall protect such business information that is confidential from disclosure that would prejudice the investor's competitive position.

2. Nothing in paragraph 1 shall preclude a Party from otherwise obtaining or disclosing information in connection with the non-discretionary and good faith application of its laws.[22]

Both of the paragraphs would appear to legitimate the application of section 703 of H.R. 3 to investments in the United States by Canadians as well as other foreigners. However, as paragraph 1 of article 1604 allows for complaints by one party against disclosures of confidential information relating to the business affairs of its residents, paragraph 2 of article 1604 seems to offer stronger support for the position that section 703 of H.R. 3 is fully consistent with the Free Trade Agreement. One assumption that would have to be made in this connection is that the term "non-discriminatory" refers to non-discrimination between Canadian and other foreign investors and not non-discrimination between Canadian and United States investors. However, such as assumption would seem to be consistent with the intention of including article 1604 in the Free Trade Agreement and the use of the term "non-discriminatory" in article 1605.[23]

Schedule 1 goes farther than section 703(c) in that in item 10 it expressly requires the notifier to state the number of persons employed in connection with any Canadian business being acquired.

The more detailed kinds of information required of persons acquiring controlling interests in United States business enterprises that have assets with a market value in excess of $20 million or gross sales in the most recent fiscal year in excess of $20 million are also of types that are generally required to be supplied to the Investment Canada Agency in the case of reviewable foreign investments. The subsections of section 703(d) match up with the items in Schedule 2 to the Regulations to the Investment Canada Act in the following manner:

Section 703(d)	*Schedule 2*
703(d)(1)	Item 5 (For three years)
703(d)(2)(A)	Item 12
703(d)(2)(B)	Item 13 (For three years)
703(d)(2)(C)	None
703(d)(2)(D)	None

The two exceptions noted above are that Schedule 2 does not require the furnishing of information respecting the directors and officers of a domestic business being invested in from abroad or information respecting any significant civil litigation that the business has been involved in within the past year. On the other hand, items 8, 13(c), 15 of Schedule 2 require the production of information that is not encompassed by section 703(d). These items relate to investment agreements, domestic work forces, and future plans. On balance, these items would appear to be broader generally than sections 703(d)(2)(C) and 703(d)(2)(D) of H.R. 3.

The CHAIRMAN. Thank you very much.

How many foreign companies, Senator Harkin, are operating in the United States? Do we know how many foreign companies are operating in the United States?

Senator HARKIN. I couldn't answer that question.

The CHAIRMAN. I heard about 22,000 or 23,000.

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[21] *Id.* art. 2105.
[22] *Id.* art. 1604.
[23] *Id.* art. 1605.

Senator HARKIN. I couldn't answer.

The CHAIRMAN. And about 90 percent are privately owned.

What I am getting at is when you say in your statement that the bill does not require anything more than what is required of publicly held businesses in the United States, is it requiring more than that required of privately held businesses in the United States?

Senator HARKIN. Yes, it is.

The CHAIRMAN. And why?

Senator HARKIN. Again, because of the nature of the investments and the fact that other countries require that same kind of information. As Congressman Bryant said, the OECD has already spoken to this issue. And we are only speaking about controlling interest. If there are just small investments—between 5 and 25 percent—they don't have to come up with the same information required of large investors. But if a privately held foreign company buys a controlling interest, which we say is over 25 percent of the assets or of the value of the real estate, then they have to come up with this additional information which, as you point out, is not required of a privately held company in the United States.

The CHAIRMAN. What about the confidentiality? Is there some protection in the bill?

Senator HARKIN. Excuse me. Mr. Chairman, Congressman Bryant wants to respond.

The CHAIRMAN. Yes.

Mr. BRYANT. Well, I would point out that that is a provision of the bill that has been the focus of a good deal of criticism because it does treat them differently, but our disclosure is not as extensive as the kind disclosure required in almost every other foreign country. I think the important thing to keep sight of is that we require almost nothing today be disclosed in a manner that is useful to policymakers. Every other nation requires a great deal, as well as imposing all of these restrictions and preclearance requirements.

The CHAIRMAN. Let's speak specifically about Canada. Are we requiring more in your bill than what is required by the Canadians, let's say, of a U.S. investor going into Canada?

Mr. BRYANT. No. We are requiring a great deal less. That is why I put this side-by-side chart before the committee and passed out as well the Congressional Research Service analysis of what they require versus what we propose to require. It is a great deal less. And, of course, we don't propose any kind of restrictions. All we ask for is disclosure.

The CHAIRMAN. Is the Harkin bill different than the Bryant amendment? And if so, why?

Senator HARKIN. I will be glad to give you a sheet which shows the differences. The biggest difference between the two is that Congressman Bryant's amendment covers what is called large passive portfolio investments—ownership or equity of 5 percent or less if the interest was valued at more $50 million. My bill doesn't cover those. Mine only goes to significant interest and controlling interest. That's the major difference between the two.

There are some other, minor differences. The sheet with the differences between the two are being passed out right now, Mr. Chairman.

The CHAIRMAN. What about confidentiality, either of you? We are told time and again that we don't mind. We are delighted to file these things, but we want to make sure they are kept confidential as they are in other countries. Is confidentiality or the proprietary nature of certain information protected? Or what protections do you have in your bill, Senator?

Senator HARKIN. This is public information. It would be publicly available. Obviously, we are not asking for them to give up trade secrets or patents or formulas or anything like that. We are not asking for any of that kind of disclosure at all. For significant interests, we are just asking for basic financial information—who are you, where are you from.

I want to stress the point that Congressman Bryant so saliently made—those registration provisions will determine who the ultimate beneficial owner is, not just the front dummies. That is where we could uncover some of this drug money.

For investors with a controlling interest, they would have to disclose basic financial information—the same kind of financial information that a company that is publicly traded on the U.S. exchanges would have to come up with right now.

Mr. BRYANT. Let me respond to that.

The CHAIRMAN. Yes.

Mr. BRYANT. Senator, there are two or three reasons for asking for public disclosure. Number one, if there is not some way to verify the collection process in the Department of Commerce by being able to look over their shoulders, we don't have any way of knowing whether or not they are doing a good job. At the present time, I pointed out the many discrepancies in the data they have now. They acknowledged having missed over $200 billion in investments. The study of the Rosenthal commission indicated that they found I think 23 OPEC investments that could not possibly have been included in the BEA data because of the size and nature of those investments. If you can't look over their shoulder, there is no way to know whether they are getting accurate data.

If there are proposals to tighten up access in some fashion to the information that would be collected by our provision, I would suggest that the critical point should be whether or not Congress can get access to the data and whether or not we can get access to the data to think-tank analysts and others who could be sure that BEA is doing a good job.

I think there is good reason on the part of this administration to want to obscure the true picture of what has happened in the last seven years. I think what we have done basically is sell the family jewels for a night on the town in the last seven years. And by that, I'm talking about our economic assets. And I think there is good reason to want to obscure the true picture.

The CHAIRMAN. Thank you.

Senator HARKIN. Mr. Chairman, if I could just add one thing on disclosure.

The CHAIRMAN. Yes.

Senator HARKIN. If you look at Canada, Japan, all the European countries, they require disclosure. Investors are not saying they're not going to invest there because we don't have confidentiality. They come up with that information. As I pointed out in my testi-

mony, last year Americans invested close to $9 billion in Canada—companies did. And they had to come up with that information.

The CHAIRMAN. Very good.

Senator Packwood?

Senator PACKWOOD. No questions, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Danforth? Excuse me. You are hiding down there.

Senator DANFORTH. Thank you, Mr. Chairman.

Gentlemen, let me ask you a question of general public policy not relating to the disclosure issue at all. Do you think that we in the government should, as a matter of policy, attempt to increase or reduce foreign investment in the United States?

Senator HARKIN. I can only speak for myself on that issue, and that is I don't know. And I don't know because we don't know how much foreign investment there is in the U.S. We don't where it is coming from. I have heard, for example, that 25 percent of the machine tool industry in this country is now owned by foreigners. I don't know if that is true or not. I'd sure like to know.

Senator DANFORTH. What is your answer, Mr. Bryant?

Mr. BRYANT. I have been asked that repeatedly, almost always by critics of the proposal. And my answer always has been the same as Senator Harkin's. I don't know and I don't think it's fair to reach a conclusion about that until you get data. We don't have the data.

Senator DANFORTH. You take no position, either one of you, one way or another, on whether it is in the best interests of the United States to restrict or encourage foreign investment?

Mr. BRYANT. I think without data we can't take a position on that. It just depends. I think clearly there would be some level at which you would begin to be concerned. And that is implicit in the offering of an amendment like this. But what level that would be it's very difficult to say without the information.

Senator DANFORTH. Let's say that a foreign investor were to purchase a U.S. oil company. Would that be something that we should try to prevent? Is it something we should try to encourage or be neutral on? Or don't you have an opinion?

Mr. BRYANT. I think it depends on how many oil companies they own and how big they are and what percentage of the overall energy productive capacity of this country they represent. We don't know the answer to that either.

Senator DANFORTH. You don't know the facts, but what would be your view on the policy question? You indicate that there is some point where you might want to have government step in and prevent it. What point would that be?

Mr. BRYANT. No. I indicated there was some point at which I think it could come, and sense would tell us that we should be worried. And I think the worry would probably lead to some type of an incentive to encourage domestic ownership of at least a significant part of a critical industry. I don't advocate prohibitions.

Senator HARKIN. Senator Danforth, if I could just answer that. I have heard that foreign investment now takes up 5 percent of our total assets. Well, you don't worry about something like that. But if of that 5 percent, there is 100 percent ownership of the oil refining

capacity and oil exploration capacity in the United States, then we might be concerned.

Senator DANFORTH. Representative Bryant, you talked about selling the family jewels. And my understanding of your comment was that you were concerned that already there was over-investment by foreign companies in the United States.

Mr. BRYANT. What I said, Senator, was that I think that it is fair to speculate that the last seven years of what I view as very superficial prosperity has been fueled in large part not by income from selling products abroad, but by borrowing money and selling assets, eating our seed corn so to speak. And I think that there was enough anecdotal data and enough aggregate data which is of doubtful validity coming in from BEA and others to be suspicious that that is the case. Hence, the amendment that I have offered.

Senator DANFORTH. So, you would tend to view, just as a matter of general policy, foreign investment in the United States as being tantamount to eating our seed corn.

Mr. BRYANT. That is not at all what I said. What I said was if that is the way in which we are financing a high lifestyle, we ought to have data that shows that to us rather than keep the data secret. And right now the data is incomplete, unreliable, inaccurate and secret. It's a bad policy.

Senator DANFORTH. Would foreign investment mean that we were eating our seed corn?

Mr. BRYANT. I think the sale of our productive assets in place of earnings in the foreign trade arena and in the place of real prosperity would be more akin to eating our seed corn than not doing so.

Senator DANFORTH. That would be true from borrowing from any source, wouldn't it, whether it is foreign or domestic?

Mr. BRYANT. Well, if you are selling off your basic productive assets, it should be of concern.

I think the real answer to your question, assuming you are not just trying to position us in order to be able to build an argument, is that implicit in the offering of this amendment is a common sense concern that something is going on in our economy that we have not experienced before that may have some unfavorable ramifications for us in the future. That is a fair characterization of my attitude.

Senator DANFORTH. But it is just speculation on your part. You don't have any view one way or another as to whether it is a good or bad thing, whether it should be encouraged or discouraged?

Mr. BRYANT. I think it is clear that if it were disproportionate, it would not be a good thing if it resulted in a loss of control over our economic future or our national security future.

Senator DANFORTH. At what point would it do that?

Mr. BRYANT. Well, that's impossible to say.

Senator DANFORTH. What kind of information would lead us to conclude one way or another?

Mr. BRYANT. The kind of information that we have asked to be disclosed.

Senator DANFORTH. How so? I mean, what numbers would have to come in to lead us to believe that there was a problem?

Mr. BRYANT. Well, you have to have the data in order for experts to analyze the data to reach conclusions.

Senator DANFORTH. It sounds like a fire drill to me if we are getting information and we don't know what kind of information would be persuasive.

Senator HARKIN. We do have fire drills in case there is a fire.

Senator DANFORTH. What is the fire though?

Senator HARKIN. That's why you have fire drills.

Senator DANFORTH. I know. Where is the fire?

Senator HARKIN. There may be a fire. We don't know. There may never be a fire, but you have them just in case.

Senator DANFORTH. Let me ask you one——

Senator HARKIN. If I could just answer that question, Senator. I just wanted to quote from Felix Rohatyn in a speech before the Economic Club in Washington, DC. He said—and I quote—"No major industrial power in the world, certainly not Japan, not even Great Britain, allows foreign control of major strategic companies to be acquired without government approval." I don't know at what point that becomes a problem, but I would ask a rhetorical question. If all of our energy producing capacity was owned by foreigners, shouldn't we be concerned about it? Well, I ask that rhetorically.

Senator DANFORTH. Let me ask you one other question, just turning the coin over. Should our policy attempt to increase or reduce U.S. investment abroad in your opinion?

Senator HARKIN. Should our policy encourage or discourage U.S. investment abroad?

Senator DANFORTH. Yes.

Senator HARKIN. I would think that we would want to have investment abroad if there is a return on that investment. I wouldn't want to invest in countries which are unstable and which are poor investments. That's a business decision not mine.

Mr. BRYANT. My general answer would be, yes, we should encourage investment abroad. I think that this provision, inasmuch as it tells foreign countries that we are not going to continue to play patsy to the world in this area, not requiring anything of them while they require everything of us, and specifically prohibit many of our investments, would begin to send a message that we expect to have a little bit of reciprocity in this area as well.

I think the bottom line is——

Senator DANFORTH. Some people would argue the opposite. Of course, some people would say that for the U.S. to invest abroad is to export U.S. jobs.

Mr. BRYANT. For the U.S. to invest abroad is to export U.S. jobs?

Senator DANFORTH. Yes.

Mr. BRYANT. Well, of course, the issue of where jobs go depends on the type of investment, and there are many factors that are really not necessarily a part of this debate except to the extent, as I observed earlier, we can't determine what the difference is between foreign investment made here that may or may not export jobs and foreign investments by American investors made there that may or may not export jobs, without data. Even the GAO, which is right now trying to do a report on that for three Members of Congress, which has as yet not been released, has admitted that

they are having a difficult time reaching conclusions because they don't have enough information.

I think it is very hard for the critics of this provision—and I would offer to anyone the opportunity to do so—to justify consciously remaining ignorant about the most dramatic development in our economy in the last seven years.

Senator HARKIN. If I might just ask, Senator, why you ask that question because that is not in our bill. Our bill does not address the issue of U.S. investment abroad.

Senator DANFORTH. No. I'm just interested in your overall policy views. You have testified that this is simply an information requirement, and it is a benign provision. But I wanted to know your underlying views as to whether we should attempt to encourage or discourage either foreign investment in the United States or U.S. investment abroad. My understanding is that you have no particular view on it one way or another.

Senator HARKIN. I see. I was under the mistaken view that you thought maybe something was in our bill regarding U.S. investments overseas.

Senator DANFORTH. No. I just wanted to engage in a little philosophical discussion.

Senator HARKIN. Well, philosophically I would say that all things in moderation, of course. There is a global economy. We invest abroad. They invest here. We need the information. I would echo what Congressman Bryant said that there comes a point where in terms of certain strategic industries, whether it is energy, or high speed computers, we might be concerned about foreign domination or total ownership. At what point the U.S. government should intervene is for public policy people to determine.

Senator DANFORTH. What point would it be for farmland?

Senator HARKIN. I don't know. Again, that is for people to decide once we have the data. That is for open and basic discourse, discussion and debate, which we should decide in the democratic fashion.

The Chairman. Senator Bentsen?

Senator BENTSEN. Thank you very much, Mr. Chairman. We have a meeting taking place in the Finance Committee, and I appreciate your letting me speak ahead of time. Thank you, Senator Exon, because I do have to leave.

I think what Senator Harkin said, "all things in moderation, 'is probably right on point.

I do get concerned when we are talking about things that affect the national security of our country. And I think when you get into that area, that there has to be some disclosure. And to that extent, I am sympathetic trying to find some accommodation in what is being proposed.

What you have to balance that off with is I don't want anything driving interest rates up any more than they are already in this country. And that means foreign capital is critical to us at a time like this. No question but what it is helping finance what has been a consumer binge in our country. But we have to make the adjustments as we are adjusting on the budget and that type of thing.

This in no way affects anything other than equity ownership, does it? It does not get into securities. It does not get into bank deposits.

Well, I am hoping that we can find some accommodation to try to take care of some of these concerns on national security and at the same point not unduly impede foreign investment in our country. I hope we can achieve that.

If you will forgive me, Mr. Chairman, I do have to go.

The Chairman. Very good, thank you.

Senator Exon?

Senator EXON. Mr. Chairman, thank you very much. And I want to welcome my colleagues, Senator Harkin and Congressman Bryant.

I just have one short question that I think we should keep in mind. I think you are both familiar with the fact that we have a number of disclosure and reporting laws on foreign investment that is scattered throughout some of our departments today. I am just wondering if you agree that possibly before we pass some new legislation in this area, maybe we ought to clean our own house to the extent to make and better assure that the information already available to us is better collected and more appropriately analyzed. Is that a concern of yours in proposing the legislation?

Mr. BRYANT. Senator, that, in sum, is really all the proposal that we are making attempts to do. It wouldn't matter how you altered the specific language of the amendment to place it in this department or that department. You could put it at the Bureau of Economic Analysis, which is already collecting a lot of data. But the important thing is that it has got to be complete reporting, which means that you know who the real owner is. It has got to be verifiable and useful, which means that there has to be access to it by Congress, by think tanks, and others who could study and make some use of the data. At the present time that just is impossible.

I'm not sure if you were here during all my testimony or not, but I went through the five or so different areas in which we collect data. It is characterized by being not organized in a way in which it can be of any use to anybody. It is characterized by being not accurate and not verifiable because you don't know who the real owner is. And I pointed out as well that the BEA is forced to admit that even today they have statistical discrepancies between 1981 and 1987 in which they have missed $223 billion in foreign capital that entered the United States.

The hearings held by Chairman Rosenthal in 1980 found 32 major OPEC investments, out of 82 which they learned of through testimony and anecdotal data, that could not by their nature and size possibly have been included in the BEA report.

So, what you are talking about I think is exactly what we are trying to accomplish.

Senator EXON. Well, I was here during your testimony, Congressman Bryant and listened to you very carefully. I guess maybe I didn't understand. And for the record, I would like to have you establish the fact that—if it is true, I didn't realize it—your legislation would repeal all of the other reporting arrangements now in place and encompass them under your and Senator Harkin's bill if it would be law. I don't believe your legislation goes that far, does it?

Mr. BRYANT. No, it does not. It asks for a study of what is going on right now in these other agencies and what the value of them is.

Senator EXON. My question was do you think it is wise to proceed to pass your legislation, even ignoring all of the other difficulties that we have in this area. I suppose your answer is yes.

Mr. BRYANT. I think it is wise to pass it so that we can begin to immediately get a clearer picture. I think an examination of what has been going on in the other areas is of value as well.

Senator EXON. Thank you.

Do you have anything to add, Senator Harkin?

Senator HARKIN. I just wanted to compliment you, Senator Exon, on the amendment that you offered that is in the trade bill dealing with national security. I think that is a positive step in the right direction.

I'm not on the conference committee but if I could, I would like to ask your thoughts, as you reach agreements with the House side with the Bryant amendment, about your amendment. In your amendment the instigating party or the moving party is the secretary or the attorney general or——

Senator EXON. The Secretary of Commerce.

Senator HARKIN. The Secretary of Commerce, the Attorney General, the head of any executive department or the trade representative initiates this at the request of these people.

I wonder if there isn't also a role for the Congress to play, the Commerce Committee for example, that might through a majority vote request this kind of information also and at least put that in.

And secondly, the amendment covers mergers, acquisitions and takeovers. I ask for your consideration of looking at the Harkin bill and Bryant amendment, and how we talk about significant interests and controlling interests. That might also be something we might want to look at as we go down the road.

Senator EXON. Well, I will be glad to respond in this fashion, Senator Harkin. In the first instance, the amendment that I offered that passed overwhelmingly in the Senate and is now being considered in conference with the House, is aimed specifically at national defense only. We have the votes I believe in both the House and the Senate in the conference to pass that amendment in essentially its original form.

We have been working very hard to try and bring the administration, particularly Treasury, on board. And so, we have tentatively agreed in the interest of getting this measure through and locking it in place because I think national security has such a key role to play in the future that we have agreed to allow the President to appoint whichever agency he feels would be most responsible and responsive to a threat of a takeover or a sale that would adversely affect our national security. We have gone that far.

I think that we have many of the same problems with reporting. We think that that kind of activity might solve some of the problems so that we don't get bogged down. And as you know, in our amendment we have some rather tightly, measured in terms of days, time for action so that a legitimate takeover that would not adversely affect national security could go through and not be hung up for months with interagency fighting or court actions.

So, I guess that one way that we could define the difference between the suggestions offered by you and Congressman Bryant is that it is more far-reaching where ours zeroes in on national de-

fense and national defense only. Those who are diametrically opposed to anything that would "chill"—that's a phrase that is used, "chill, chill, chill"—have thrown our amendment in with yours in total opposition. I have worked very hard to try and separate the two, but without a great deal of success thus far.

But at least the administration is taking a more reasonable approach, and I want to publicly thank my friend and colleague from Missouri, Senator Danforth, who was with us yesterday when we met with Treasury officials on this. And I think that we are somewhat near maybe coming up with total agreement on that. But it is still a rather delicate process, and we need the help of all of us on this committee and on the other committees involved in those negotiations to steer this one through.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. Congressman, let me ask you one question because I may have misunderstood what you said. I am quoting from Secretary Ortner's statement. "Of the G–7 countries, only Canada makes some information about foreign investment publicly available. In the remaining G–7 countries, information about foreign investment is not available publicly by name, and in the United Kingdom there is no requirement that foreign investment, either direct or portfolio, be registered or screened by any government agency." Is that an accurate statement?

Mr. BRYANT. I think the part regarding public disclosure is accurate. I disagree with——

Senator PACKWOOD. I didn't hear.

Mr. BRYANT. The part regarding public disclosure as opposed to disclosure to the government is accurate. The part regarding screening in the United Kingdom I believe is inaccurate.

Senator PACKWOOD. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank you both.

I think that you would want to elaborate on that answer of not knowing. And I think that is a good answer that you don't know whether it is a good, affirmative policy to attract foreign investment, or on the contrary, to attract our domestic companies to invest in foreign countries. There is a general rule in policy that both are good. That is the sum and substance of the Marshall Plan to get us to invest overseas and beginning to beef up those economies. And for those who have gone capitalistic, it has worked. And it has inured to all of our benefit.

And similarly, living in an international economy every governor has got an office in downtown Tokyo. Even if he doesn't get any industry, he likes to take the trip.

And in downtown in the Netherlands where you can get that good chocolate and good food there. So, they all are working.

And we in South Carolina have attracted many Japanese industries. We don't bash them and we don't send, incidentally, our workers back to sing company songs. There are limits. There are limits to the investments from both sides.

And Senator Exon is on to the right limit with respect to national security. In order to maintain as a world power, you have to have the capacity to produce steel, rubber, glass, aluminum, rolling stock. You can't deliver your wheat on an optic fiber. And we have

got to look at that. And you are right. We don't have the information.

On the other hand, we have got to watch this investment by our own ownerships investing overseas whereby we in the Congress force them all to invest over there by adding on the high risk, some kind of thing they have down on the floor right now where you are going to get up a whole new bureaucracy and label everybody and then be liable for them coughing 30 years hereafter. I don't know how you are going to get the coverage for it. If you are going to add on to my company all the double-breasted and the parental leave and the pregnancy leave and the high risk and everything else—and you ought to make one of those lists, unemployment, Social Security, clean air, clean water, safe work and safe machinery, just keep on going down the list and adding to it as a congress.

And I can tell you right now we are forcing too many just regularly established industries not necessarily attuned to the national security to invest overseas. And that is why we are ending up flipping those hamburgers you are talking about because it doesn't pay to open up a formative manufacturing establishment in the United States anymore.

You learn from hard experience. We have been attracting industry in the southeast for 35 to 40 years. Now for the last six or seven years, they are leaving the southeast in order to get ahead of the curve down into Mexico. There are over 1,000 down there now: 5 GEs, 5 Westinghouse, RCA has got its biggest plant, General Motors. And with the blind policy that we have relative to investment, you can't get a return. So, if you are going to really get into that international competition, you are being forced overseas.

Your answer is correct. You have to know particularly with respect to our own national security, at least there, and then it is a political debate whether or not it affects the national security.

We appreciate your appearance. If there are not any other questions, we want to hear now from Secretary Ortner.

Mr. BRYANT. Thank you very much.

Senator HARKIN. Thank you.

The CHAIRMAN. Thank you very much.

Dr. Ortner, we welcome you here to the committee.

And Secretary Ortner, we will include your statement in its entirety, and you can highlight it as you wish or deliver it in full.

STATEMENT OF DR. ROBERT ORTNER, UNDER SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE, ACCOMPANIED BY BETTY BARKER, CHIEF, INTERNATIONAL INVESTMENT DIVISION, BUREAU OF ECONOMIC ANALYSIS

Dr. ORTNER. Thank you, Mr. Chairman.

I first of all would like to introduce Betty Barker, who is here with me. Ms. Barker is Chief of the International Investment Division of the Bureau of Economic Analysis whose data Congressman Bryant and Senator Harkin were discussing earlier.

Mr. Chairman, I appreciate the opportunity to appear before the committee and the opportunity to offer my views on foreign direct investment in the United States and on the Bryant amendment

which would limit and reduce foreign investment in the United States and which will damage our own economy.

I have prepared a formal statement for the record, and as you suggest, I will try to summarize it.

The first thing I would like to talk about is the importance of investment in general to our economy. And that importance does not depend on whether the investment is domestic investment or foreign investment in the United States. I would like very much to emphasize that.

Investment in our economy does two very important things. It adds to our capacity, and it helps to modernize our industrial base and raise our productivity.

At this stage of our expansion, which is now in its 64th month, the longest on record during peacetime, we have lifted the operating rate in our economy up to about 83 percent of capacity. And please note in that regard that the index, which is compiled by the Federal Reserve Board, never reaches 100 percent of capacity. In strong business cycle peaks, it rises to 88 or 89 percent of capacity. We are getting to the point now where we are at pretty full operating rates. And as the rate moves up beyond 83 percent, we will begin to see some bottlenecks developing around the economy. We will begin to see more inflationary pressures building in our economy. It is very important for us to continue to invest in our economy and add to our capacity which will give our economy additional room to grow in the future.

I mentioned that investment helps to modernize our industrial base, adds to our productivity and make us more competitive. Certainly I don't have to argue on that score. Everybody agrees that we need to make our economy more competitive.

So, why should we be concerned about investment? Well, investment is the source of the economy's growth and growth in real incomes, and by that token, it is a source of growth in our standard of living. That is what our economy is all about, and that is what economic policy should be trying to promote.

I won't go quite as far as Vince Lombardi might in saying it is the only thing that matters. But I do think that it is one of the most important activities in our economy. In this regard, I think of investment as the economy's fountain of youth which will keep this longest peacetime expansion on record moving along.

I believe it is also generally agreed that during this post-war period we have been an over-consuming, under-investing economy. I have not heard any comment to the contrary. And certainly that is true compared with other major industrial countries.

During this post-war period, for example, the portion of our gross national product that has been devoted to plant and equipment investment has averaged about 10 percent of total GNP. In the last few years, with faster growth in capital spending, we have managed to raise this to about 12 percent of our GNP. That increase is good.

Japan, for example, during the post-war period has invested about 16 percent on average of its gross domestic product in new plant and equipment. Recently that percentage is running about 18 percent. Other industrial countries similarly are generally invest-

ing a larger share of their GNP in new plant and equipment than we are.

As a result, U.S. productivity growth, until the last very few years, has been one of the slowest among all the major industrial countries. From 1960 through 1986 in manufacturing industries in the United States, the growth in our productivity averaged about 2.8 percent per year, Mr. Chairman. In Japan it has been faster than 7 percent per year; in Germany, a little better than 4.5 percent per year. These are our international competitors in the world markets.

In 1985 and 1986, especially in 1986, we have been doing a little better because, as I mentioned, we have accelerated our investment in our economy. We have averaged about 4 percent per year in those two years. In 1986 it was 3.5 percent. In Japan and Germany it slowed down a bit. The increase in Japanese productivity was 2.8 percent, a little slower than ours; and Germany, 1.9 percent.

I wouldn't put too much emphasis on that shift because in my opinion the slowdown in productivity growth in Japan and Germany was due mainly to a slowdown in overall growth in their economy rather than because of a turndown in investment. And I think it is going to prove to be temporary. The point is that we still need to do everything we can to promote investment in our economy.

I would like to point out, Mr. Chairman, that Japanese investment that built their economy and made them such a strong competitor in the world markets was investment at home, not investment by Japanese individuals or companies in the United States or any place else. Investment here, whether by United States or foreign companies, builds our economy.

What do we get from foreign investment? Well, non-bank, U.S. affiliates of foreign companies employ 3 million workers. We get jobs. These affiliates pay them more than $80 billion a year in compensation. We get the income. These same affiliates are exporting more than $50 billion a year of merchandise into the world's markets. We are getting exports from those companies at a time that we need those exports critically. Their exports amount to about 20 percent of our current export totals which, by the way, are now growing very rapidly at about a 20 percent annual rate in real volume. And these foreign affiliates are certainly helping to boost these exports.

These foreign affiliates also pay taxes in the United States. They pay to the U.S. Treasury $8 billion a year in income taxes, and that certainly helps another problem. They also pay taxes to state and local governments.

Now, they are not investing here just out of goodwill or just to help us. That's true. What do they get out of it? Recently their profits from these aggregate operations in the United States, are running about $5 billion a year. We hear complaints that foreigners are earning money here and repatriating it back home, and that this is something that we have to deal with. Well, these complaints are absurd when we consider that the earnings they are repatriating back home, $5 billion a year, amount to something like one-sixteenth of the amount that they pay to American workers that they employ.

In addition, they bring new management techniques and new technologies to the United States when they build plants here and invest here. We also hear complaints that they are stealing our technologies. Those complaints are equally absurd, Mr. Chairman. We don't have all the technology in the world within our own borders.

Last year, according to the records of the Patent and Trademark Office, which is part of the Department of Commerce, patents issued to foreign companies amounted to 46.6 percent of all the patents issued. The top three companies in numbers of patents received were Cannon Electronics——

The CHAIRMAN. Dr. Ortner, let's take judicial notice. We all love money. We all love investment, and we all know it creates jobs. Why don't you tell this committee how this bill harms foreign investment or harms the economy of the United States? I mean, in all respect, we all have been to many chambers of commerce, and I've organized them all.

And you are just on and on about how good investment in money is. Everybody knows that. That isn't our problem. We want to know how this bill hurts it.

Dr. ORTNER. I was going to comment also on the extent of ownership of assets in the United States about which the Congressman and the Senator spoke at length. And I hope, therefore, that that could be a relevant part of my discussion. But if I can say something about that, which will take me just about a minute, I would then talk also about how we know about that because that pertains to the data that we have.

We have heard many comments, and the Congressman and the Senator pointed out that in some areas, foreigners may be taking over American industry which is detrimental to America. They didn't cite many statistics. I think it is important to know what the facts are.

In terms of overall assets, according to our own records—and we have most of these records at the Bureau of Economic Analysis—foreigners own about 4 percent of total assets. There is concern about how much land they are buying up. We have accurate records that indicate they own less than 1 percent of the land in America. They do own somewhat more in manufacturing, overall about 11 percent according to the latest published figures, and in a couple of industries it is a little larger than that.

Congressman Bryant expressed concern about how much they own in the oil industry. In the oil industry, it runs about 15 percent currently. They certainly are not taking over the entire oil industry. We do not divulge from BEA the names of individual companies. They did observe that. But the point is that of that 15 percent, half of it is in the hands of two companies, British and Dutch companies. And I think everybody knows who they are.

Probably the amount of ownership is overstated also in a general kind of way because we count as foreign-owned any company in which the foreign owner controls 10 percent or more of the total assets. So, the actual ownership by foreign companies is probably less than the 11 percent that I mentioned.

In the aggregate, foreign direct investment in the United States amounts to $209 billion. That was the figure at the end of 1986. It

is equally important to observe that American companies operating abroad own $260 billion worth of assets. We have a positive investment balance in terms of direct investment.

Well, how do we know all of this? These data are collected by BEA through several surveys. All foreign investments in U.S. business enterprises in which a foreign person owns a 10 percent or more voting interest must report these investments to BEA. This reporting requirement is under the International Investment and Trade in Services Act. Violations may result in civil and criminal penalties.

We have accurate aggregate data released by BEA. They show these data by industries and by countries. Data for individuals or individual firms collected under this act may not be released to the public. For economic policy purposes, what they release to the public is all that we need to know.

I have brought with me several samples of reporting forms. Selecting one at random, this is the BE–12 which foreign companies use to report their holdings in America. This form itself has almost 300 questions in it. BEA collects an enormous amount of data.

I was very startled to hear Senator Harkin comment that these data are inadequate. I don't think, with all due respect, he is familiar with all of the data that we actually collect. He also said that these data are secretive and, therefore, we can't see these figures. These data cannot be judged both secret and inadequate. For the information that we need, they are certainly adequate.

In addition to these surveys which I would like to submit for the record, we also have some documents which help to explain what they are.

In addition to this information that is collected by the BEA, we also collect information in the Commerce Department through the International Trade Administration. These data are based on publicly available information, and they are reported annually in a compilation released by the Department of Commerce. I will make this available for the record also.[1]

We also have extensive mechanisms for dealing with foreign investment in the United States that we might deem in the administration a threat to our economy or to the country in one way or another. And perhaps you don't want me to dwell on that for a very long time. I'm referring here—and I'll state this very quickly—to the Cabinet level Committee on Foreign Investment in the United States which is chaired by the Secretary of the Treasury. Through the operations of this committee, we certainly can review foreign investment in this country, which is what the Congressman and the Senator would like us to do. I had the feeling in listening to them, with all due respect, Mr. Chairman, that they weren't entirely aware of everything that we have and everything that we do to review these investments.

In that case, I would like to sum up our view of this amendment which I have been requested to and invited to testify on.

We are opposed to this amendment because it is discriminatory. It is hypocritical. It is damaging, and it's unnecessary. It is dis-

[1] The material referred to was not reproducible.

criminatory, of course, against foreign companies. I am sorry that the Congressman didn't leave the chart here that he had with him pertaining to Canada. Canada does require some disclosure of investment in that country. And I had the feeling in listening to the Congressman that what he is concerned about is that if they do that, we ought to retaliate against them. Our answer to that and our feeling about that is that if Canada wishes to shoot itself in the foot, why should we?

He also referred to reporting requirements in the UK, and there he is wrong. The UK does not discriminate against foreign companies investing in their country. They do not screen foreign investment coming in there, and they do not control it. Nonetheless, I would repeat again that whether they do or not may very well be irrelevant. And what we would like to accomplish in this administration is not adding our own limitations against foreign investment coming into the United States, but removing the barriers on the other side. And I think you know, Mr. Chairman, that we are working very hard on that problem and in that direction.

I say that the Bryant amendment is hypocritical. Throughout the whole post-war period, the United States has been arguing with its trading partners and allies around the world that they should accept our investment in their countries. Now we are trying to set up barriers through these bills that would limit foreign investment coming into the United States.

I say that it is damaging. I did go on at length pointing out the importance of investment to our economy. If we shut it down or even limit it by a moderate amount, that will be damaging to our economy. It will also result in retaliation against our companies who wish to invest in foreign countries.

What hasn't been brought out, Mr. Chairman, is that it is also damaging to our statistical system in our own government. Our statistical system is based on anonymity. We do not disclose the individual identity of people or firms who respond to survey questionnaires distributed and collected by either the BEA or the Census Bureau. We are very fearful that if we go down this road of divulging the names of individuals, we will begin to have a great deal of difficulty collecting the data that we need for both government and private use.

I say that it is unnecessary because I've already cited some of the mechanisms that we have within the administration to review and control, if necessary, foreign investment in this country. We have antitrust laws. Certainly we can control foreign investment in the United States if there are national security questions that are raised.

In sum, Mr. Chairman, it is a bad proposal, and I'm not sure which metaphor would be better. If we adopt this proposal, we would be shooting ourselves in the foot, or maybe the other one, we would be cutting off our own noses, or maybe both. The result would be, in effect, a one-footed, noseless economy which would have difficulty competing in the world markets. And it seems to me we need all the help that we can get.

That is the end of my statement, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Pressler?

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Thank you very much. I think this is an extremely important issue. I do have an opening statement, which I will summarize here briefly, and I do have some questions which I will ask after yours.

I have been very concerned about the dramatic increase in foreign investment in the United States. Originally, my wife and I were in Hawaii where we witnessed firsthand the extent of foreign investment in some of our traditional hotels in the tourism industry. In only a few years, the United States has gone from being the world's largest creditor to being the world's largest debtor. A major driving force behind much foreign investment is our huge Federal deficits. The Federal Government is living so far beyond its means that we must depend upon foreign countries to finance our deficit and provide much of the capital for the private sector. The low rate of U.S. savings also contributes to the problem.

Our dependence on foreign investment creates many problems. However, I do not think placing additional reporting requirements on foreign investors will solve these problems.

To effectively address this issue, we need to reduce our Federal deficits and make changes that would encourage U.S. citizens to save and make investments in domestic industries. Many of the policies of the Federal, state and local governments encourage and in many cases even beg foreigners to invest in the United States. For example, the Toyota plant received an estimated $125 million in incentives to build a plant in Kentucky. We should be giving these incentives and assistance to local businesses to expand or get started. This would create and generate wealth domestically.

Attracting these foreign firms creates jobs, but most of the profits go back to Japan. The U.S. labor force and market is being exploited by the Japanese and other foreigners. We should help domestic companies be competitive, rather than, subsidizing foreign firms to compete with our domestic industries. It would be more effective to restrict the incentives given to foreign companies to locate in the U.S., rather, than placing reporting regulations on foreign investors.

Placing additional or burdensome regulation on foreign investments could threaten our entire economy by driving up interest rates. However, it is something we have to consider. The effects of the proposed legislation must be carefully examined before action is taken.

Mr. Chairman, I look forward to hearing the testimony of these witnesses and working with the committee to address this important issue.

Mr. Chairman, after your questions I have several questions.

The CHAIRMAN. Well, go right ahead.

Senator PRESSLER. I do apologize. I've got three committees going at the same time, which is how well we are organized here in the United States Senate. If I missed some of this, just say "read my statement." And I'm going to read your statement.

First of all, has any study or analysis been done on the estimated impact of S. 1697, or the so-called Bryant amendment, on interest rates in the United States? And if so, what were the results?

Dr. ORTNER. I am not aware of a study that attempted to assess its effect on interest rates.

The Bryant amendment, as it stands now—I think it originally included financial investment, portfolio investment. And if I am not mistaken, it now includes only direct investment, which is a smaller part of the total. But that is the kind of investment that goes into companies and new plants and new equipment. And in my testimony, I express great concern about cutting down this investment because we need investment to grow.

Senator PRESSLER. Yes. It is in the trade bill or they're trying to put it in the trade bill. Of course, we legislate plant closings in the trade bill and now we are doing tax law in the trade bill.

But in any event, if the Federal Government did not have a $150 billion annual deficit, would we be seeing the amount of foreign investment we are experiencing? If we had a balanced Federal budget, what impact would that have on foreign investment?

Dr. ORTNER. Portfolio investment might be a little smaller. I am not sure. I don't agree with the assertion that foreign investment is coming into the United States because we have a budget deficit. There may be a minor impact there. Some people might argue a moderate impact there. The large budget deficit that we have probably serves to raise interest rates somewhat. I don't think by a huge amount.

The somewhat higher interest rates probably attract some foreign investment in the form of portfolio investment into Treasury securities or into corporate bonds. Foreign direct investment into the United States and a large amount of equity investment, which we don't count as direct investment because it doesn't amount to 10 percent or more of the company, come into the United States because foreigners regard the United States as an attractive place to invest.

To that extent, Senator, if we were able to cut the budget deficit—and I think we all agree that we should try to do that—sometimes we disagree on the methods and what we have to do to do it, but I think we all agree that we should try to cut the budget deficit—I think that would be regarded generally as a favorable move. It probably would enhance the attractiveness of the U.S. economy as a place to invest. And I'm not at all sure that foreign investment would be reduced.

Senator PRESSLER. Thank you very much.

The CHAIRMAN. Dr. Ortner, do you know of any company that says it will stop investing in the United States if it has to provide this information?

Dr. ORTNER. Well, I'm aware of a letter written by the British Ambassador raising questions about it. I am also aware from my own experience in the banking industry that foreigners are very sensitive to the question of anonymity and public disclosure. And I'm afraid that I have to rely on my own knowledge, experience and my opinion in saying that it will reduce foreign investment in the United States.

The CHAIRMAN. Well, why hasn't it reduced foreign investment in other countries?

Dr. ORTNER. We don't know that it hasn't. We have investment in Canada, but there might have been more investment in Canada if it weren't for the disclosure requirement.

Much of the direct investment in Canada, of course, is related to the operations of our automobile industry. And our major companies in that regard may not be concerned about the disclosure. They would disclose it any way. There may be many other investors who would be very happy to invest in Canada but for disclosure requirements, and we don't know that either.

In any case, in this Free Trade Agreement, which we are trying to accomplish with Canada, one of the things we would like to do is reduce the restrictions and barriers to the free flow of investment between our two countries. And the way to do that is to get rid of the barriers on the other side, not raise them on our side.

The CHAIRMAN. Well, I was intrigued when you said that the United Kingdom had no restrictions because even again this week's Time Magazine—and I read from it—"The Kuwaitis know that the British government could thwart any foreign bid for control of British Petroleum by simply ruling that such a sale would be against the public interest." And the United States trade representative has put out a long list—and I'm looking at all kinds of restrictions by the United Kingdom—and supporting exactly what Time is reported. It says, "The Industry Act allows the government to halt the transfer of United Kingdom manufacturing assets for foreign investors when there are circumstances that appear to constitute a change of control." And in order to determine that, there is a review process by which the Department of Industry determines whether the manufacturing unit is of special importance.

There are all kinds of restrictions in the United Kingdom. Of course, you cancelled yourself out. You said in the first part of the statement how important—the investment in Japan was all done by the Japanese, that they had expanded their economy by the domestic investment by domestic investors investing in their own country. And then you call it a positive balance when you said we had more investing outside of the country than others investing in the country. Logic would say that we would want to get them all back in the country.

But in any event, I'm looking at all of these requirements that are required by all these different countries. And you just draw a conclusion. And I'm looking for facts upon which to make a judgment. Wherein has it stultified investment anywhere in any one of these countries particularly when we have got the overall richest market in the world and the most stable of all governments and economies? So, those are the two big things, and they are going to come here and get the business unless they've got some information that should be known really, that should not be kept secret. I want to know what listed down here would really deter? In this Harkin bill, what would deter a foreign investor?

Dr. ORTNER. If I may correct one thing, or at least clarify one thing, because maybe I misspoke. But when I said that what built Japan was investment in Japan, I don't think that I specified that that investment was only by Japanese companies. In my opinion what builds any economy, whether it is Japan or the United States,

is investment in the economy whether it is by domestic companies or by foreign companies.

Now I have forgotten the second part of your question, Senator.

The CHAIRMAN. The specific listing here under the Harkin bill, that information, the identity and nationality of each director, the significant interest in the property, the controlling interest in such United States business enterprise. It goes down a listing here. And I am at a loss to understand how, just given that kind of information, it would deter investment.

Dr. ORTNER. Well, of course, we can't give you statistics. And as a matter of fact, I think the argument that we are presenting has more statistics already in it than I heard from the two gentlemen, with all due respect, in their earlier testimony. We don't have statistics showing that public disclosure would impede foreign investment because we haven't done that yet.

But I have been asked to give my opinion. That is my honest opinion. And I feel very strongly based on my business experience, as well as experience in the government, that public disclosure of individuals and individual companies will reduce foreign investment in the United States.

And then there is a legitimate question to raise, whether this is good for our economy or is it bad for our economy. My strong feeling is that it is very bad for our economy.

The CHAIRMAN. Why does it take the Department of Commerce some two to three years to publish the information that you do correlate because it is of no use to us? It comes too late and it's secret. So, why are we correlating all that information just to read history some three years later?

Dr. ORTNER. Well, we have very good information on an aggregate basis. And year by year you can see the trends. We know, for example, as I mentioned before, that foreign interests own perhaps 14 or 15 percent of the oil industry in the United States. They are not taking it over as I thought I heard Congressman Bryant suggesting. This information is made available in about a year and a half or two years.

Perhaps I can ask Ms. Barker to comment further on exactly when——

The CHAIRMAN. Why is the 1987 bench mark due in 1989 and 1990?

Dr. ORTNER. Well, the bench mark is a complete census. What I rushed through before, at your request, sir, was that most of the information that we get in transactions for balance of payments purposes and also foreign investment is done on a sampling basis quarterly and annually. Every five years we perform what we call a bench mark survey. That is a complete census. And this gives us further guideposts along the way to help monitor the amount of foreign investment by industries, by country, and provides a great deal of information. If you would like more detail on that——

The CHAIRMAN. Yes. Maybe I can ask your colleague. Why do you say the 1987 bench mark is due in 1990, three years later? With computers it seems like you would have it out tomorrow.

Ms. BARKER. That is incorrect, sir. The due date for the BE–12 bench mark survey, when the companies have to return the forms to us, is May of this year, May 31, 1988. We are scheduled to have

preliminary results of that survey out one year later in May of 1989.

The CHAIRMAN. Why does it take a year to get it out?

Ms. BARKER. It is an enormous amount of paper. I think Dr. Ortner showed you a copy of the form for that survey. We are mailing out approximately 15,000 of these, and it takes that long to process the data, make sure it is accurate. It goes through considerable edit checks in order to insure the accuracy. We double-check with the companies. There is a great deal of follow-up that is done, and then we tabulate the information and publish it. All that does take some time. And I think that one year is really a pretty good record for most statistical agencies.

The CHAIRMAN. The IRS will send me my form next month. They will have it back in another month. They'll have it all correlated. And it has got a lot more information than that.

Senator Exon?

Senator EXON. Mr. Chairman, thank you very much. I just have one question on a closely related subject.

Dr. Ortner, are you familiar with the so-called Exon amendment that passed the United States Senate overwhelmingly, and I think will become law, with regard to and directed specifically at foreign takeovers that significantly adversely affect the national security interests of the United States? Are you familiar with that proposal?

Dr. ORTNER. I am aware of it, sir. I hesitate to say "familiar" because I don't know what you mean by the degree of familiarity.

Senator EXON. Well, what is your opinion of that piece of legislation?

Dr. ORTNER. Well, you commented earlier yourself, Senator, that you are now negotiating or discussing this piece of legislation with the Treasury Department. And I think it would be inappropriate for me at this delicate stage—and since I am not involved in it—really to comment on it. And I hope that you will forgive me and excuse me if I don't comment on it.

Senator EXON. I understand. I wanted to give you a chance to comment on it if you wished to. Evidently you do not, and I understand your position. Thank you, Dr. Ortner.

Thank you, Mr. Chairman.

The CHAIRMAN. I thank you both very much.

Senator PRESSLER. Mr. Chairman?

The CHAIRMAN. Excuse me. Yes, Larry?

Senator PRESSLER. Could I just get two more questions in?

The CHAIRMAN. Yes.

Senator PRESSLER. In your judgment, have the incentives offered by state and local governments to attract foreign investors had a significant impact on foreign investors? What would be the impact if some restrictions were placed on these incentives to foreign investors?

Dr. ORTNER. I don't think that anyone could provide you with any data that would show exactly how much foreign investment has been the result of some of these incentives. I should think some of it has.

But that is something that we would not want to control or influence in the Federal Government. Essentially that is a private

matter, it seems to me, between the particular state and the foreign company. We would not in the administration want to propose or promote the idea that a state government should provide more incentives to a foreign company to invest in the state than they would provide to a domestic company. And I should think if they are doing that, that is a policy that will not last very long for one reason or another.

Senator PRESSLER. How much of the current foreign investments would have been prevented by placing additional reporting requirements on the investors?

Dr. ORTNER. There is no way of knowing exactly how much. We have never had experience in this country with public disclosure of individual investments and investors. And therefore we don't know exactly how much. It would be ridiculous for me to try to put a number on it, whether it's 5 percent or 10 percent or 20 percent of the investments.

I think any limitation or any reduction in foreign investment, especially the direct investment, which is what we are talking about, would be harmful to our economy, and we would argue against it.

And for reasons that I said before, this public disclosure would be damaging to our statistical system as well. And I think that that is something that hasn't had enough attention, Mr. Chairman. We are very concerned about the foundations of our statistical system. We believe very strongly that the returns that we get from our surveys are much higher than they would be if people thought we were going to disclose their identities.

Senator PRESSLER. We currently have, I understand, 14 or so agencies collecting some kind of material on foreign investments. I know that USDA has done a study on foreign investment in farmland. Is this coordinated, or do we lack statistics? Or is it a lack of understanding? Would the public be more aware if we did more reporting, or is the information there now, but it's just not centralized? What is your judgment on that?

Dr. ORTNER. My judgment is that we have the information available. And maybe Ms. Barker could add some detail on that.

Ms. BARKER. we collect extensive information on foreign investment in the United States. As was mentioned earlier, we have our benchmark surveys that are taken about every five years, collecting extensive data both for balance of payments purposes and also on the financial structure and operations of the individual U.S. affiliates. There was one statement made earlier that we do not know the names. It is true that we do not disclose the names of foreign parents and ultimate beneficial owners. We do know the names of the foreign parent, which is, by our definition, the first person outside of the United States. We also know the name of the vast majority of the ultimate beneficial owners. It is only in the case where the ultimate beneficial owner is an individual person that we do not know the name, and that is not the usual case for ownership of foreign direct investment.

We also collect quarterly surveys and annual surveys to update the data from the benchmark survey, and we publish them in easily accessible booklets and in the Survey of Current Business, which is our agency's monthly publication. They come out regularly.

Senator PRESSLER. Well, I think that this hearing is illustrative of a new era in the United States. We all seem to complain about foreign investment when we see it with all those hotels in Hawaii being owned by the Japanese; we all shake our heads and say is that not terrible. On the other hand, we seem to be encouraging it by wanting plants in our states and jobs without really much detailed, rigorous analysis of how much this affects local employment, if the same incentives were spent on people who are already there, taxpayers who are already here working, plants that are already producing, if they could be expanded.

It seems that every time a new industry is attracted to a state there is all kinds of publicity, and this is considered an accomplishment by the governor and the congressional delegation, and everybody takes credit, but the fact of the matter is that perhaps if we had added a few jobs onto 200 small businesses already there, or if we had helped keep farmers on the land, or businessmen going who were there, we would do more for employment and job security.

But I think in the next few years it is going to be more and more of an issue that we are going to grapple with, not only with this bill, but with all legislation around here because it has become a key issue. We want it and we do not want it. We are ambivalent. So I think that in analyzing this amendment, in analyzing this piece of legislation, we are going to have to try to rigorously get down to the real jobs for Americans.

Thank you very much.

[The statement follows:]

STATEMENT OF ROBERT ORTNER, UNDER SECRETARY FOR ECONOMIC AFFAIRS, DEPARTMENT OF COMMERCE

Good morning Mr. Chairman, I am Robert Ortner, Under Secretary for Economic Affairs in the Department of Commerce. I have administrative responsibility for operations of the Bureau of Economic Analysis (BEA) which collects, assesses and publishes data on foreign investment in the United States.

I appreciate the opportunity to testify today on the Bryant amendment to H.R. 3, the Trade Bill. This legislation would require public identification of all foreign individuals who make major investments in the U.S. I appreciate as well the committee's invitation to offer my views on the economic impact of foreign direct investment in this country and its implications for policy.

U.S. INTERNATIONAL INVESTMENT POLICY

International direct investment plays a vital role in expanding the world economy. To ensure its maximum contribution to both global and domestic economic well-being, the Administration and most economists believe that international direct investment flows should be determined by private market forces and should receive non-discriminatory treatment consistent with the national treatment principle.

The United States welcomes foreign direct investment. The United States accords foreign investors the same fair, equitable, and non-discriminatory treatment it believes all governments should accord foreign direct investment under international law.

The United States opposed government intervention that impedes or distorts investment flows or attempts to shift artifically the benefits of these flows. These measures include trade-related or other performance requirements, fiscal or financial incentives, and discriminatory treatment of foreign investment.

The United States is pursuing actively in the OECD and GATT initiatives aimed at reducing or removing any foreign government actions that impede or distort trade or investment flows, and at developing an international system, based on national treatment and most-favored-nation principles, that permit investment flows to respond freely to market forces.

The Administration believes that an investment registration and disclosure program (as proposed by the Bryant amendment), for the purpose of public disclosure and identification of individuals who invest in the U.S. would discourage foreign investment and therefore harm the economy.

CURRENT REPORTING REQUIREMENTS FOR FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

The Commerce and Treasury Departments share responsibility for providing information on foreign investment in the United States. Commerce collects the data on inward *foreign direct investment*—that is, investment resulting in the foreign ownership or control of 10 percent or more equity interest in a U.S. business. Other inward foreign investment is categorized as *portfolio investment*, which is the responsibility of the Department of the Treasury. My comments deal principally with the statistical and policy issues related to direct investment.

BEA collects a great amount of data on foreign direct investment in the United States. We believe these data are sufficient for policy-making purposes and for use by Government and private entities in assessing the economic impact of foreign investment on the economy. Additional data, and disclosure of the data, are unnecessary for analytic purposes. When a foreign person establishes or acquires a direct investment interest in a U.S. business enterprise, BEA collects information on the ownership of the investment, its cost, and selected financial data. Owenrship information includes percent of voting shares and total equity interest held, identification of the foreign owner, and whether the foreign investor is government-owned or controlled.

Data on the industry distribution of sales of the U.S. affiliate, which are necessary to classify the foreign investment by industry, are collected initially in connection with the report on new investments, and subsequently whenever a change occurs in the industrial orientation of the investment.

Data on transactions between U.S. affiliates and their foreign parent companies are collected on a quarterly basis. These data are used in preparing the balance of payments accounts and the international investment position of the United States.

Financial and operating data of U.S. affiliates—such as balance sheets, income statements, information on employment, exports and imports, and other selected data—are collected on an annual basis.

Information that is more comprehensive and covers a larger number of U.S. affiliates is collected in periodic benchmark censuses. A new census is now being conducted and will cover the year 1987. Such censuses will then be conducted every five years thereafter.

Reporting requirements for Foreign Direct Investment in the United States (FDIUS) surveys vary, but they aim generally at maintaining the statistical reliability of the data, while minimizing the reporting burden on the business community. The information is published as statistical aggregates classified by foreign country, by industry of affiliate and, where appropriate, by State within the United States.

Pursuant to the law under which the data are collected (The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101-3108), information for individual firms may not be released outside those statistical agencies designated by the President to perform functions under the Act. The Act's intent is to supply Government and other users with the aggregate information the need to assess the impact of FDIUS. The purpose is *not* to require firms to provide data that could be used as a basis for actions against these firms or that would result in exposure of their operations to potential competitors.

LEGAL AUTHORITY AND CONFIDENTIALITY

All reports are mandatory pursuant to the International Investment and Trade In Services Survey Act. Failure to file any of the required forms is punishable by a civil penalty not exceeding $10,000. Willful failure to file is punishable by a fine of not more than $10,000 and imprisonment for not more than one year, or both. If the offender is a corporation, any officer, director, employee or agent of the corporation who knowingly participates in a violation may be punished by a like fine, imprisonment, or both. That same Act provides that all reports submitted are confidential and may be used only for analytical or statistical purposes. The information provided cannot be used for purposes of taxation, investigation, or regulation and copies retained by the respondent are immune from legal process.

We strongly believe that the confidentiality now provided for an individual firm's data is appropriate and necessary for maintaining the integrity of the statistical program and the statistical agencies involved.

Attached for the record are copies of forms BE-12, BE-13, BE-14, BE-607, BE-605, BE-606B, and BE-15. Attached also are explanation sheets that describe the forms and their usage.

In addition, the Commerce Department's *International Trade Administration* collects and publishes annual reports on individual transactions based on comprehensive monitoring of publicly available sources, including SED filings, press reports and direct contacts. In contrast to the BEA statistics, these data specify the company name of both the U.S. affiliate and the foreign parent firm or entity. These annual reports also contain information on each investment's industry sector, city and state location, and type and value, as well as the country of the foreign parent.

A copy of the 1986 Transaction Report from ITA is attached for the Committee's review.

MONITORING FOREIGN INVESTMENT

President Ford established the Committee on Foreign Investment in the United States (CFIUS) by Executive Order 11858 in May, 1975. This Order directed the Committee to monitor the impact of foreign investments in the United States, both direct and portfolio, and coordinate the implementation of United States policy on such investment. The Committee is chaired by the Treasury Department and included Assistant Secretary-level membership from the Departments of State, Defense, Commerce, the Office of United States Trade Representatives and the council of Economic Advisers. Representatives of other agencies are invited to participate in CFIUS proceedings when issues arise that are of interest to those agencies.

The CFIUS is a monitoring body. It does not have authority to approve or disapprove foreign investments in the United States. The Committee reviews investments which have major implications for national interests.

Through its review and monitoring activities, the CFIUS focuses executive branch attention on investments which may have adverse effects for U.S. interests. It is also important to remember that we have a number of restrictions on activities of foreign investors which specifically address particular aspects of the operations of an investor (e.g., antitrust, export control laws, Industrial Security Program, Defense Production Act).

Information on foreign investment is brought to the attention of the Committee in various ways. CFIUS member agencies frequently bring foreign government and private investments to the attention of the Committee, as did the Department of Defense recently in the case of Fujitsu's proposed investment in Fairchild Semiconductor Corporation. The Department of Commerce's International Trade Administration, as directed by Executive Order 11858, collects information on individual foreign direct investment transactions from public sources and refers to the CFIUS transactions that may have major implications for U.S. national interests.

CFIUS is thus useful in focusing the attention of the executive branch on matters of concern to these agencies. These agencies are able to review how a proposed acquisition would, in their opinion, affect the national interest as well as to review legal authority under their jurisdiction. CFIUS reviews may be conducted in conjunction with reviews under the antitrust laws, and take the views of the Justice Department into consideration.

If the CFIUS concludes that a foreign government investment would have adverse implications for the national interests, the Chairman will communicate this conclusion to the Economic Policy Council. Over the years the practice has been to seek to modify any objectionable aspects of the investment, such as unauthorized access to classified information or technology, rather than deter the investment in its entirety.

BENEFITS OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

Foreign direct investment in the United States is good for the economy and should be encouraged. As a result of such investment, the United States gains new factories, jobs, income, exports, and improved technology and better management techniques.

Foreign Direct Investment:

Like Domestic investment, promotes real growth and increases the competitiveness of U.S. industry. To the extent that direct investment and portfolio investment help to promote economic growth and hold down U.S. interest rates, they also encourage domestic investment.

Has had a positive effect on the distribution of employment—helping to keep more people employed in manufacturing and strengthening local economies.

Facilitates the transfer of foreign technology and the introduction of successful foreign management practices to this country. Closing our doors to foreign direct investment would limit these opportunities.

Benefits U.S. consumers by increasing competition within individual industries. U.S. firms facing on-shore foreign competitors cannot respond with appeals for trade protection. They must cut costs, improve their products, and market more aggressively.

In summary foreign direct investment benefits the United States. At year end 1985, nonbank U.S. affiliates of foreign firms:

Employed nearly 3 million Americans; had payrolls of more than $70 billion; paid about $8 billion in U.S. income taxes (plus additional state, county and local taxes); exported over $55 billion of merchandise; and held a foreign direct investment position in the United States of $185 billion and $209 billion in 1986, as opposed to the U.S. direct investment position abroad of $230 billion) and $260 billion respectively.

In addition, these affiliates: Bring in new and innovative management techniques; provide capital infusion for faltering firms in merger and acquisition activities; provide greater competition with accompanying increased consumer choices and lower prices; bring new technology to the U.S.; increase their economic dependence upon the U.S., thereby strengthening international economic ties; and help to assure that U.S. investment abroad will be given fair treatment.

There is one final benefit of foreign direct investment. We are now in our 64th month of our economic expansion. Foreign investment in U.S. manufacturing facilities will help us to sustain this economic growth period.

FOREIGN INVESTMENT PRACTICES: UNITED STATES AND G7

Foreign investment, which has helped fuel U.S. economic development, has come to this country for many reasons, not the least of which is the long history in the U.S. of respecting private property rights and investors' basic rights to financial privacy. By discriminating against foreign investment and by limiting these rights to privacy, the Bryant Amendment would encourage foreigners to take their money elsewhere, and could easily result in retaliatory measures being adopted by countries which currently welcome investment by U.S. companies. Of the GY countries, only Canada makes some information about foreign investment publicly available. In the remaining G7 countries, information about foreign investment is not made available publicly by name. In the United kingdom, there is no requirement that foreign investment either direct or portfolio, be registered or screened by any government agency.

The United Kingdom is the largest source of foreign direct investment in the United States, with a total position of around $51 billion in 1986. The United States, in turn, is the largest source of foreign direct investment in the U.K. In 1986, American holdings in Britain were worth $35 billion and represented a third of all U.S. investment in Europe. The longstanding interdependence of British and American business has worked to the mutual benefit of both countries.

The British Ambassador, Antony Acland, in letters to members of the Senate Government Affairs Committee stated:

Section 703 of H.R. 3 . . . This provision would affect both companies which have been good U.S. citizens for decades and those which wish to establish plants and businesses for the first time. It would thus discourage new investment from Britain at a time when the United States is anxious to improve its competitive position in world markets.

There are no discriminatory reporting requirements relating to foreign direct investment in the U.K. But clearly the British Government will find it more difficult to resist calls for such requirements if the United States, which is the major source of foreign investment in Europe, itself introduces them.

Section 703 of the House trade bill would run contrary to the commitments which the United States has made to accord national treatment to foreign investors. It would also be contrary to OECD agreements to which the United States is a signatory, notably the OECD Declaration and Decisions on International Investment and Multilateral Enterprises which was concluded in 1976 and revised in 1984. At a time when the United Kingdom and the United States are working together, bilaterally, and in the new GATT Round to improve protection for foreign direct investment worldwide, it would be particularly damaging if Congress were to adopt a provision of this sort. Both our countries share an interest in discouraging discrimination against our firms in their markets and in upholding international agreements.

The Administration's policy, in brief, is to welcome foreign investment in this country, when determined by market forces, while we encourage other countries to

maintain a similar view of U.S. investment overseas. The free movement of international investment benefits all countries. In fact, FDIUS benefits the U.S. economy even when it flows from countries that bar similar investments abroad by U.S. firms.

SUMMARY

Section 703 of H.R. 3 (the Bryant Amendment), which would require the registration and public disclosure of foreign investments in the United States, would place unreasonable, discriminatory, and unjustified reporting burdens on foreign investors in the United States. The Bryant amendment would place U.S. affiliate companies at a significant competitive disadvantage with other domestically based companies by requiring them to publicly disclose confidential business information.

The Administration believes that current reporting requirements for foreign investment are more than adequate. In addition, public disclosure of individual investment by foreign and domestic purchasers of over five percent of the stock of a publicly traded company are already reported to the SEC. The Treasury Department collects aggregate data on foreign portfolio investment in U.S. equities. The Commerce Department already collects voluminous data on foreign direct investment in the U.S. The International Trade Administration collects data on individual transactions and assesses their implications. Any direct investments which might negatively affect U.S. national interests are reviewed by the Interagency Committee on Foreign Investment.

Imposition of discriminatory and burdensome reporting requirements would have a dampening effect on new foreign investment in the U.S. While the proposed registration system adds little new information to that currently available for purposes of economic analysis, the public disclosure of the specific information—some of it proprietary—would subject foreign investors to more onerous disclosure requirements than those for domestic investors. Foreign investment, which has helped fuel U.S. economic development, has come to this country for many reasons, not the least of which is the United States' long history of respecting private property rights and investors' basic rights to financial privacy. By removing these rights, the Bryant amendment would encourage foreigners to take their money elsewhere.

Finally, the Bryant Amendment is certain to result in retaliatory measures being adopted by countries which currently welcome investment by U.S. companies. At a time when the U.S. is urging its trading partners, in particular in the current GATT negotiations, not to discriminate against U.S. investment, the Bryant amendment sends precisely the wrong message at the worst possible time.

ADDENDUM

The following information was supplied orally, and was not included in the written statement that was distributed on March 24.

Claims that foreigners are taking over America or many of its industries are greatly exaggerated. Our data show that:

Foreigners control only about 4 percent of total assets.

They own less than one percent of U.S. land.

In manufacturing, they control about 11 percent of assets. In very few industries do U.S. affiliates of foreign firms account for about 20 percent of the industry's total assets. If we leave out the top four companies, mainly well known European firms, the proportion of foreign control of manufacturing assets comes to half of the figures cited.

In any case, the share of foreign ownership is overstated because we classify a company as a foreign affiliate if 10 percent or more of its equity is owned by foreigners—that is, on the basis of a 10 percent interest the entire company is attributed to foreign ownership.

Foreign direct investment in the United States amounted to $209 billion at year-end 1986. U.S. direct investment abroad was $260 billion. The positive margin was probably much larger. These are book values. Since U.S. direct investments abroad are much older than foreign direct investments in the United States, U.S. direct investments abroad probably have appreciated more than foreign direct investments in the United States.

It may be of interest to note that almost one-half of foreign direct investments in the United States is owned by companies in the United Kingdom and the Netherlands.

[The following information was subsequently received for the record:]

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS THERETO

1.Q. In the Carter Administration, The U.S. government policy toward international investment was "to neither promote nor discourage inward or outward investment flows or activities." The Reagan Administration policy has been to welcome foreign investment as a "vital and necessary ingredient in a stable, growing world economy." What caused this change in policy?

A. On September 9, 1983, the President released a major policy statement encompassing the views of the Administration on international investment. The last time such a policy was released was in July 1977. Since then, we have come to view international investment which responds to market forces as a vital and necessary ingredient in a stable, growing world economy. To ensure its maximum contribution to both global and domestic economy if well-being, the United States believes that international direct investment flows should be determined by private market forces and should receive non-discriminatory treatment consistent with the national treatment principles.

The United States welcomes foreign direct investment that flows according to market forces. The United States accords foreign investors the same fair, equitable and non-discriminatory treatment it believes all governments should accord foreign direct investment under international law.

With the current environment of widespread international debt problems, foreign direct investment flows take on increased importance. Foreign investment can act as a catalyst for growth, introduce new technology and management skills, expand employment and improve productivity. Foreign direct investment can be an important source of capital and can stimulate international trade. Both home and host country economies benefit from an open international investment system.

Government intervention in the international allocation of investment resources will retard economic growth. Interference with the market mechanism can cause serious distortions in trade and investment flows, encourage the retaliatory use of similar measures by other governments, and precipitate a downward spiral in global investment flows.

To counter such measures, the United States will pursue an active international investment policy aimed at reducing foreign government actions that impede or distort investment flows, and at developing an international system, based on national treatment and most-favored-nation principles, that permits investment flows to respond more freely to market forces. The United States will work to protect U.S. investment abroad from treatment which is discriminatory or otherwise inconsistent with international law standards.

2.Q. An editorial appeared in the Washington Post on March 10, 1988 on a provision in the trade bill dealing with reciprocity for primary dealers. The editorial noted that "Japanese dealers in New York are a major conduit of Japanese funds coming into this country to buy Treasury securities." It further stated that "anything that threatens or harasses the dealers promises to diminish that flow of [capital]." It advocates adoption of a weaker Senate provision which may not be as fair because the U.S. is unfortunately "desperately dependent" on foreign capital. Do you agree with the theory that we can't do anything in the trade bill to upset the Japanese because we are dependent on their money?

A. Foreigners supplied 114 billion dollars to the credit market in 1987. This was 16.5 percent of the total $688 billion raised in the U.S. credit markets by domestic nonfinancial sectors, according to the Federal Reserve. Japan's contribution, of course, was only part of that. In 1986, for example, Japan purchased 18 percent of total U.S. corporate bonds purchased by foreigners. Data by country for 1987 are not yet available.

The U.S. Government is not dependent on any group of foreigners to purchase its debt and has always welcomed and benefited from foreign participation in the U.S. treasury market.

3.Q. This country has a long history of attracting foreign investment--starting, of course, at the beginning of the Republic and continuing through the 19th century, where foreign money helped to build American's infrastructure. Foreign investment is nothing new. However, the U.S. fell from its position as the world's largest creditor nation in 1982 to being the world's largest debtor in 1986. This foreign money was coming in mainly to finance our budget deficits and our overconsumption, not to increase America's productivity. What does this distinction mean for the future of this country? Can the U.S. continue to finance its budget deficits with foreign money? Does it concern you that experts estimate that the U.S. will be a net debtor to the tune of $1 trillion by 1990?

A. The Economic Report of the President provides an appropriate summary of the outlook for the net international investment position of the U.S.
..."In 1981 the U.S. net international investment position was $171 billion (valued in 1986 dollars). The deterioration to -$264 billion in 1986 reflects the cumulative effect of a string of large external deficits as well as some valuation changes. Estimates of the flow of net foreign investment suggests that the U.S. net international investment position may have grown roughly $150 billion, to approximately $400 billion in 1987. Even at $400 billion, net foreign claims on the United States are not large relative to the income generated by the U.S. economy that can be used to service them. Net foreign claims of $400 billion represent less than 10 percent of U.S. GNP. Assuming a 5 percent real rate of return, the income required to service these claims would amount to less than one-half of one percent of U.S. GNP. And based on the amount of income paid on foreign-owned assets abroad, the income required for net debt service in 1987 was about 0.1 percent of U.S. GNP. Consequently, concerns about the current stock of net foreign claims on the United States may be overstated.
While the current level of net foreign claims should not be cause for alarm, persistent growth of such claims at an annual rate equivalent to three and a half percent of U.S. GNP (about $150 billion in 1987) would be a source of worry. At this rate, net foreign claims on the United States would reach 40 percent of U.S. GNP by the end of the century. Servicing these claims, assuming a 5 percent real rate of return, would consume about 2 percent of U.S. GNP - still not a large percentage, but a very substantial absolute sum. Relative to the size of the economy, U.S. net indebtedness would not be much larger than Canada's has been in recent years. However, the absolute figure would be very large - more than $2 trillion in 1987 dollars. This could present difficulties for the world financial system, especially if for some reason foreigners suddenly become less willing to hold claims on the United States. Evidence of a steady reduction of the U.S. external deficit over the next few years will prevent these difficulties from emerging."

4.Q. Since 1981, how many times has CFIUS met? How many investments have been examined? Have any investments been stopped? Have any of your member agencies advocated that the U.S. government step in to stop an investment? Have you ever questioned a foreign buyer? What did CFIUS do with respect to the Fairchild/Fujitsu acquisition?

A. CFIUS has formally reviewed 28 cases since 1981. (A list of these cases is attached.) The CFIUS agencies have also examined a number of cases at the staff level which they decided did not merit a full-scale review at the Assistant Secretary level.

-- CFIUS is an advisory committee that is charged with reviewing those investments which in its judgment might have major implications for the national interest. It does not have authority to block investments.

-- However, CFIUS can quickly focus Executive Branch attention on aspects of an investment which may have adverse implications for U.S. national interests.

-- The Committee has never made a final determination that any investment would have such implications.

-- Particular agencies have on occasion argued that an investment under consideration might have major implications for U.S. national interest.

-- CFIUS normally questions representatives of the buyer, among others, in the course of a formal review.

-- CFIUS undertook a thorough review of the Fairchild-Fujitsu investment proposal in an effort to identify and evaluate any implications for U.S. national interests from the proposed transaction.

-- The CFIUS agencies failed to reach agreement on the existence of such implications but did agree to have the Economic Policy Committee resolve the issue.

-- Fujitsu withdrew its proposal days before the EPC was scheduled to meet to discuss this proposal.

FOREIGN DIRECT INVESTMENTS IN THE UNITED STATES; CFIUS CASES
1981-1987

CASE	CFIUS FINDS NO MAJOR IMPLICATIONS	CFIUS MEETING
1981		
Kuwait Petroleum-Santa Fe	*	10/15/81
Kuwait Petroleum-Pacific Resources	7/22/81	5/13/81
Elt Aquitane-Texas Gulf	9/18/81	7/29/81
CIT-Alcatel-Lynch	10/2/81	9/23/81
1982		
Aerospatiale	2/2/82	1/20/82
Cogema-Pathfinder	8/31/82	1/20/82
Inspiration Coal-Frontier Coal	4/26/82	4/22/82
CDC-Savin	5/4/82	4/22/82
KPC Andover	8/31/82	4/30/82
Carboex-Ashland	9/2/82	4/22/82
Sohio-Kitt Energy	9/2/82	4/22/82
Gulf-Resources	11/9/82	7/30/82
1983		
CISI-Wharton	3/1/83	1/10/83
Paribas-Becker	4/6/83	11/16/82
Oris-Syncor	6/6/83	5/20/83
Renault-Mack	7/7/83	6/24/83
Goldworthy-Mfl	*	11/10/83
Busicom-Isotimpex	*	11/10/83
Santec-Nanjing Telecommunications	*	11/18/83
Nippon Steel - Special Metals	**	5/30/83
1984		
Empresa-Microtech	11/5/84	6/20/84
Bull-Sems-Ridge Computer	*	6/20/84
Rolls Royce-Jet Express	*	6/20/84
Santa Fe-Occidental Geothermal	*	6/20/84
1985		
Minebea-New Hampshire Ball Bearing	3/11/85	10/23/84
Santa Fe-Keydril	3/28/85	2/27/85
1986		
Fujitsu-Fairchild Semiconductor	**	12/18/86
1987		
Thomson-Wilcox	8/27/87	8/27/87

1/Notifications of approval on file
* Approval communicated orally
**Offer withdrawn

5.Q. Has anyone ever been prosecuted for failure to file a form required by the International Investment Survey Act? If yes, how many prosecutions since its enactment in 1976?

A. No one has ever been prosecuted for failure to file a form required by the Act. The General Counsel's Office of the Department of Commerce vigorously pursues recalcitrant reporters referred to them by BEA and, to date, has been successful in obtaining reports. No case has resulted in further referral to the Justice Department. Meetings have been held in the past between members of Commerce's General Counsel's Office and Justice Department attorneys, and the Justice Department has agreed to prosecute if necessary.

6.Q. In light of Toshiba's illegal sale of sophisticated machine tools to the Soviet Union--is it of any concern to you that it is estimated that 25% of America's machine tool industry is foreign-owned?

A. The illegal Toshiba sale of sophisticated machine tools to the Soviet Union and foreign investment in the U.S. machine tool industry are really two different issues. The Toshiba incident highlighted a critical fact: that Japan is a world leader in the manufacture of high technology equipment. The machine tools Toshiba Machine Corp illegally sold to the U.S.S.R. were extremely sophisticated, and purely Japanese. That is why it is so urgent that Japan and our other COCOM allies should carefully control what they manufacture. It has been a major goal of this Administration, since 1981, to get our COCOM partners to adopt more stringent export control laws and better export licensing and enforcement programs.

On the foreign investment issue our estimate is that foreign ownership of U.S. machine tool production capacity is significantly less than 25 percent of the industry. On the whole, we welcome foreign investment that leads to the development of new production facilities in the United States. Such investment creates jobs, stimulates our economy and enhances our defense production base. For example, Japan has increased in Japanese investment in new machine tool production facilities in the United States. Okuma, one of the largest Japanese producers of high technology machining centers and computer numerically controlled lathes has established a state-of-the-art production facility in Charlotte, NC. These facilities will not only lead to the transfer of Japanese manufacturing technology to this country, but also that production from these facilities will replace rather than supplement units currently imported from Japan.

From a strong U.S. industrial base perspective, foreign investment is also not bad. That is because any U.S. - based production facility, no matter what the ownership, is subject to the Defense Priorities and Allocations System (DPAS). The DPAS ensures priority access for important "defense-rated" projects, and will continue to ensure that national security-critical projects will have first call on the machine tools, bearings, and other defense-critical products produced in the United States.

Finally, there should be no concern about foreign-owned companies selling to proscribed countries. If any item is manufactured in the United States, it is subject to U.S. jurisdiction. Therefore, for example, any machine tool manufactured in the United States is subject to our export control laws and regulations, regardless of the ownership of the facility.

7.Q Were you involved in the freeze of Iranian assets during the hostage crisis? At the time, BEA showed $5 million of Iranian foreign direct investment-yet other (including ITA) showed assets of $81 million.

[Some discrepancy occurs because capital was borrowed here and does not show up in BEA's inflows, but not enough to justify this discrepancy!]

In fact, a February 2, 1979 confidential government memo noted "There is very little information available about Iranian-owned assets in the United States, since most transactions may be made without encountering any reporting requirement...No one has any firm estimate of the size, distribution or composition of Iranian private real assets in the U.S..."

How can we adequately implement freezes for foreign policy reasons--on Iranian, Libyan, or Panamanian assets -- without adequate information?

A. At the time of the freeze of Iranian assets, BEA was asked to provide data to several agencies on Iranian foreign direct investment in the United States. Aggregate data were provided on both the Iranian foreign direct investment position in the United States and the total assets of U.S. affiliates of Iranian investors. The numbers cited the the question probably refer, respectively, to the Iranian direct investment position in the United States and to total assets of U.S. affiliates. The position and total assets are two very different measures of direct investment, and comparing them is like comparing apples and oranges.

The foreign direct investment position is the book value of foreign parents' equity in, and net outstanding loans to, their U.S. affiliates while total assets are equal to the sum of (1) total owners' equity in affiliates held by both foreign parents and all other persons and (2) total liabilities owed by affiliates to foreign parents and all other persons. Thus, the Iranian direct investment position in the United States may be small relative to total assets of Iranian-owned U.S. affiliates.

For comparison, in 1980, the Iranian foreign direct investment position in the United States was $22 million, while total assets of Iranian-owned U.S. affiliates were $135 million (representing 23 U.S. affiliates); in 1985, the Iranian direct investment position was $16 million and total assets of Iranian affiliates remained at $135 million (representing 21 U.S. affiliates).

BEA requires reporting of all foreign direct investments in the United States (defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of a U.S. business enterprise) as long as the exemption level for a given survey is exceeded. The exemption level is as low as $1 million of assets, sales, or net income in BEA's benchmark surveys. BEA pursues, and obtains reports from, all U.S. affiliates above that level. Based on BEA's data, which have been verified by independent sources to the extent possible, there is very little direct investment from Iran. It should be noted that some Iranian private real assets in the U.S. consists of real estate held exclusively for personal use. Such real estate holdings are not considered business enterprises and, therefore, are not reportable in BEA's direct investment surveys. Ownership of less than 10 percent in a business enterprise is excluded from direct investment and included instead in portfolio investment; data on the latter are compiled by the Treasury Department.

8.Q. The Commerce Department is required by the 1976 International Investment Survey Act to issue benchmark surveys. When do you expect the 1987 survey to be released?

A. The benchmark survey covering 1987 was mailed to respondents at the end of February 1988. The survey consists of a long form (BE-12(LF)) to be filed by foreign-owned U.S. affiliates with assets, sales, or net income greater than $20 million, a short form (BE-12(SF)) to be filed by U.S. affiliates with assets, sales, or net income between $1 million and $20 million, and a form to determine the U.S. person's reporting status and claim exemption from reporting, if appropriate (BE-12(X)). The BE-12(X) is due within 30 days of receipt. The due date for the BE-12(LF) or (SF), whichever is applicable, is May 31, 1988. Preliminary results of the survey are scheduled for publication in mid-1989, about a year after the due date of completed reports. Revised data will be available the following year.

9.Q. In your 1986 testimony before the House Subcommittee on telecommunications you said the Department believes "the confidentiality now provided for an individual firm's data is appropriate and necessary for maintaining the integrity of the statistical program. Can you see altering the confidentiality rules to provide Senators, Congressman and a limited number of key policy-makers with information?

A. No. Reporting requirements on foreign direct investment in the United States are aimed at minimizing the reporting burden on the business community while maintaining the statistical reliability of the data. The information is published as statistical aggregates classified by foreign country, by industry or affiliate and where appropriate by state with the United States. In this published form the data are ample for analytical policy and statistical purposes, no additional access to these data is necessary, and additional disclosure would provide little or no analytical value.

The International Investment and Trade in Services Survey Act, 22 U.S.C. 3101-3108 intent is to supply Government and other users with the aggregated information they need to assess the impact of foreign direct investment in the United States. The purpose is <u>not</u> to require firms to provide data that could be used as a a basis for actions against these firms or that would result in exposure of their operations to potential competitors.

The Administration strongly believes that the confidentiality now provided for individual firms data is appropriate and necessary for maintaining the integrity of the statistical program and the statistical agencies involved.

10.Q. Treasury Secretary Baker endorsed -- for Canada in the new Free Trade Agreement -- a foreign investment review mechanism that not only requires disclosure, but also permits the government to block investments over a certain size and investments of any size in a variety of industries. Why do you think he supports this practice for Canada, but lobbies against it here?

A. Canada had very onerous restrictions on foreign direct investment, including the Foreign Investment Review Agency (FIRA) under the Trudeau Administration. These restrictions were liberalized substantially by the Mulroney Administration, including the replacement of FIRA by Investment Canada.

Our objectives in the FTA negotiations were to prevent future Canadian governments from backsliding and to liberalize current Canadian policy to the maximum extent possible. Under the FTA, U.S. investors will be better off with a more certain, open foreign investment climate in Canada. We tried to move Canada even farther to a completely open investment climate but could not do so.

Under the FTA, Canada will be committed to continue for U.S. investors its current practice of no reviews of "greenfield" new investments. After a phase-out period, Canada will no longer review indirect takeovers by U.S. investors. An indirect takeover of a Canadian subsidiary results from a primary merger in the United States between the U.S. parent firm and another non-Canadian firm. Most direct takeovers by U.S. investors will also no longer be reviewed -- i.e., takeovers of firms with less than C$150 million in assets. Moreover, once the screening threshold rises to C$150 million, it will be expressed in constant dollars, to prevent future inflation from eroding it.

With the higher threshold, direct takeovers of about the 600 largest firms will be subject to review, a sharp drop from the 7500 that are subject to review now. That is substantial liberalization.

U.S. policy welcomes inward foreign investment that is determined by market forces. This policy is based on our self-interest. We want the benefits that foreign direct investment brings: jobs, output, technology and managerial skills. The President's 1983 statement recognizes these benefits.

To impose on ourselves a screening mechanism like Canada's would be contrary to our own interests and a significant step backward for the U.S. economy. Investment reviews deter foreign investment and alter business decisions, costing the economy jobs, inflows of technology and new management skills. Thus, such reviews would make it harder for the United States to compete in the world marketplace.

11.Q. In your 1986 testimony, you said that foreign direct investment in the U.S. has expanded rapidly because of

growing technology and marketing capabilities of foreign firms;

economic growth in the U.S.;

the threat of U.S. protectionism; and

the decline in the foreign exchange value of the dollar.

Given your reasons for the increase in FDI, why do you think a reporting requirement would chill FDI?

A. Existing reporting requirements on foreign investment are adequate. The United States already has numerous existing reporting and registration requirements for various types of foreign-held interests in U.S. property. For example, the Williams Act amendments to the Securities Exchange Act of 1934 require voluminous information reporting when more than 5 percent of registered voting equity securities are acquired, when a tender offer for more than 5 percent of such securities is made or when there is a change of directors stemming from an acquisition of more than 5 percent of such securities.

Additionally, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 contains pre-merger or pre-acquisition reporting requirements which are also applicable, in many cases, to foreign-held interests in U.S. property.

Importantly, The International Investment and Trade in Services Survey Act specifically requires the filing of reports by a U.S. business enterprise (including real estate) in which one or more foreign persons owns a direct or indirect interest of 10 percent or more. Failure to file such reports may result in significant civil and criminal penalties. Of course, the information so gathered is confidential and is used only for analytical and statistical purposes.

With respect to U.S. farming, ranching or timber land, the Agricultural Foreign Investment Disclosure Act of 1978 requires additional information reporting.

Also, U.S. tax laws contain additional, significant information reporting requirements applicable to foreign-owned interest in the United States. The Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) gives the Treasury Department authority to require reporting by foreign persons holding direct investment in U.S. real property interests. And the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) requires foreign-controlled corporations and foreign personal holding companies engaged in business in the U.S. to report various information.

In sum, it seems clear that additional reporting requirements to be imposed at this time on foreign-held interests in U.S. property would add to the burden by duplicating existing law.

Present FDIUS surveys aim to minimize the reporting burden on the business community while maintaining the statistical reliability of the data. Under current law, information on individual firms may not be released outside those statistical agencies designated by the President to collect the data.

Confidentiality of data on individual firms is needed to maintain the integrity of the statistical program and the statistical agencies involved. Such confidentiality would have been breached under the Bryant Amendment to H.R. 3.

12.Q. Do BEA figures show foreign concentration in specific sectors -- for example, would you have a chart showing that 50% of the U.S. cement industry is foreign-controlled?

A. The share of U.S. business activity in a particular industry accounted for by foreign-owned firms can be derived by comparing data from BEA's annual survey of the operations of nonbank U.S. affiliates of foreign direct investors with data from the Census Bureau's Quarterly Financial Report for Manufacturing, Mining and Trade Corporations (QFR). Results of a comparison of total assets for 1985, the latest year for which BEA's data have been published, are shown in the attached table. (Comments below about 1986 are based on nearly final BEA estimates for that year, which are scheduled to be released in the first week of May.)

The comparison is limited to manufacturing because the QFR data for mining and trade cover only corporations with assets over $25 million; also, unlike for manufacturing, the exclusion of unincorporated businesses from the QFR mining and trade data means that a significant portion of all-U.S. business activity is missing. In the table, industry detail within manufacturing is limited to the roughly 2-digit SIC breakdown published in the QFR. Thus, cement manufacturing is included in the stone, clay, and glass products category. (Cement manufacturing is also not a separate industry category in the BEA data; however, in general, the BEA data are available in considerably more industry detail than that shown in the table.)

In 1985, U.S. manufacturing affiliates' share of the total assets of all U.S. manufacturing businesses was 11.5 percent; among subindustries, the shares were highest in chemicals (29.9 percent); primary metals (21.8 percent); stone, clay, and glass products (21.7 percent); petroleum and coal products (14.7 percent); and paper and allied products (10.9 percent). In 1986, the affiliate share of total manufacturing is expected to be about the same. Among subindustries with the highest affiliate shares, the share in chemicals is expected to rise a bit; the shares in stone, clay, and glass products and in petroleum and coal products are expected to be about the same; and the shares in primary metals and paper are expected to fall. The largest increase in affiliate share--from 7 percent to above 10 percent--is expected in printing and publishing.

Concerning valuation, note that often when a company is acquired, whether by foreign or U.S. buyers, its assets are revalued to reflect the new, generally higher, value implicit in the acquisition price. These revalued assets are reported in BEA's annual survey. Because much of the growth in foreign direct investment in recent years has involved acquisitions, the share of total affiliates' assets that has been recently revalued is probably much higher than that for all U.S. businesses. The result may be some overstatement of the affiliate share of the all-U.S. total.

13.Q. Mr. Edward M. Bernstein, a respected economist, noted in 1985 that the size of the statistical discrepancy - now up to $166 billion according to the Treasury Department - leads most analysts to believe it is due mainly to unreported transactions. Would you agree?

A. The statistical discrepancy measures the unrecorded transactions in all of the separate accounts in the balance of payments. Many experts believe that, in recent years, much of the discrepancy has been due to unrecorded capital inflows, but think that these inflows are largely portfolio investment, not direct investment.

The $166 billion figure cited in the question is probably a cumulative figure over some period of years. In any one year, the discrepancy has been much smaller--it was $18 billion in 1985, $24 billion in 1986, and $22 billion in 1987.

1.Q. What assurance do you have that BEA is getting the correct nationality of the ultimate beneficial owner of the 10% or more interest in a U.S. firm?

A. BEA normally accepts the nationality of the UBO that is reported by a U.S. affiliate unless it has reason to believe that the reported nationality is incorrect. If, for example, a news article or other source indicates a nationality different from the one reported, BEA will investigate. If a reporter changes its UBO from one report to the next, BEA will investigate and verify which is the correct one. Also, there are certain "countries of convenience," such as Panama, Netherlands Antilles, and the Cayman Islands, that are not accepted as the correct nationality in our forms review process without further verification. The reporting entity is contacted in these cases. A great deal of effort is spent on verification of the UBO during BEA's review process.

2.Q. What is the penalty for non-compliance with the reporting requirements of the International Investment Survey Act? Is this strong enough to deter, hypothetically, an agent of Ferdinand Marcos from filing a false report?

A. Under Section 6 of the Act (now titled the International Investment and Trade in Services Survey Act), whoever fails to report may be subject to a civil penalty not exceeding $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment, or both.

Since the law prohibits BEA from disclosing information relating to a specific investment, a question about whether penalties are adequate cannot be answered with regard to a particular investment. It is BEA's view that the penalties are sufficient to deter an agent from filing a false report. BEA's not aware of any instance where they have not been sufficient.

3.Q. How does BEA publicize its surveys to ensure compliance?

A. In order to publicize BEA's foreign direct investment surveys, BEA staff constantly reviews major newspapers, trade journals, and other sources or listings of companies in order to locate potential respondents. All potential respondents that are located are sent forms and other literature explaining reporting requirements. BEA also obtains company names from ITA's Office of Trade and Investment Analysis, which subscribes to a news clipping service and places a great deal of resources into locating new foreign investments.

Notices of BEA's surveys appear in the Federal Register. In addition, special effort is made to publicize the benchmark survey. A publicity notice for the 1987 benchmark survey has been sent to the economic development departments of all 50 States and 5 territories to be further distributed to their "clients." This notice was also sent to the overseas offices of the 28 States that maintain such offices to locate foreign investors for their States. In addition, the notice will be sent to major CPA and law firms and to major real estate organizations, such as the National Association of Realtors. BEA staff maintains close contact with staff of the Agriculture Department's foreign investment in agricultural real estate program so that the two staffs can publicize each others' reporting requirements. BEA also plans to provide notification to the Commerce Department's field offices concerning the benchmark survey.

4.Q. Why does the Census Bureau refuse to share its business information with BEA? Are you aware that according to a 1978 legal memorandum prepared by the American Law Division of the Library of Congress the statute does not prohibit intra-agency data sharing?

A. We are aware of the 1978 Library of Congress opinion on this matter, and discussed our disagreement with it in a letter from this Department's General Counsel to Congressman Rosenthal (attached). The Census Bureau is prohibited by law from sharing any of the individually indentifiable data it collects and maintains with anyone, except sworn Census Bureau employees. BEA however, may provide information it collects to the Census Bureau which, in turn, can do any analysis necessary for policy making purposes, without, of course, disclosing any individually identifiable information as required by section 9 of Title 13 U.S.C. and section 3104 (c) and (d) of Title 22 U.S.C.

5.Q. Do we know, on average, what percentage of profits made in the U.S. are repatriated to the home country? [The Budget Committee put this at 79% in 1985]

A. U.S. earnings distributed abroad (repatriated) by foreign parent companies are published by BEA in the quarterly Survey of Current Business articles on U.S. international transactions.

On the table below, column #1 gives the foreign parents' share in the earning of their U.S. affiliates (net of withholding tax on distributed earnings paid to the U.S. government); column #2 gives the amount distributed abroad to the foreign parent. Data for 1984-1987 (from the June 87 and March 88 issues of the Survey) show the following:

	Column #1 Earnings (net of withholding tax)	Column #2 Distributed earnings	Ratio
	(millions of dollars)		
1984	6,279	3,383	.54
1985	3,029	4,407	1.41
1986	2,481	3,788	1.53
1987	8,523	4,557	.53

In both 1984 and 1987, a little over 50 percent of the earnings of U.S. affiliates was distributed to foreign parents. In 1985 and 1986, in contrast, the amount distributed was greater than the earnings for the year.

This seeming anomaly of paying out more in a given year than was earned is not that unusual. For a variety of reasons, firms tend to maintain regular distributions to owners even though earnings fluctuate widely. As the data show, the main reason the ratio of payout to earnings varied was because of the sharp changes in earnings; the amount distributed changed much less year-to-year than did earnings. When earnings in a given year are not large enough to sustain the desired payout, funds are taken from the accumulated retained earnings from previous years to make up the difference. As a result, reinvested earnings for the year are negative and the parent's equity (i.e., its investment) falls. Obviously, this kind of thing cannot go on indefinitely, for the value of the parent's investment would ultimately fall to zero or turn negative.

The focus should not solely be on the relationship of distributed to total earnings to the amount invested, a measure of the rate of return on investment. The rate of return on foreign direct investment in the United States has been low in recent years. (The broadest measure of return, direct investment income divided by the average position for the year, was about six percent in 1984 and 1987, and about three percent in 1985 and 1986.) Thus, even though distributed earnings remained fairly constant in recent years and were larger than total earnings in both 1984 and 1985, they were still quite modest relative to the investment base (i.e. the direct investment position.)

6.Q. Do we know on average what percentage of FDI is financed through inflows of capital and what percentage is financed in the U.S.?

A. In order to evaluate sources of financing, it is necessary to consider financing of the overall operations of U.S. affiliates of foreign direct investors, not just the transactions that contribute to the direct investment position. (By definition, virtually all of the year-to-year change in the position is due to capital inflows.) Data from BEA's annual survey of the operations of nonbank U.S. affiliates of foreign direct investors provide the necessary detail.

In concept, year-to-year changes in affiliates' total assets are financed by changes in a variety of sources of funds, both internal and external to the affiliates. Data on major internal and external sources of funds are available from the annual survey. Major internal sources are reinvested earnings (net income less distributed profits) and charges against income for depreciation and depletion. Major external sources are debt and equity (capital stock and additional paid-in capital) investment from outside the affiliate; in the annual survey data, external sources of funds are further disaggregated to show the portion of external funds coming from the foreign parent group (FPG), i.e., the foreign parent and foreign affiliates of the foreign parent. (The concept of external funds from the FPG is similar to that of equity capital and intercompany debt inflows as recorded in the balance of payments; however, the balance of payments measure includes, and the external funds measure excludes, changes in U.S. affiliates of the foreign parent. (The concept of external funds from the FPG is similar to that of equity capital and intercompany debt inflows as recorded in the balance payments; however, the balance of payments measure includes, and the external funds measure excludes, changes in U.S. affiliates' receivables due from the FPG.)

A comparison of external funds from the FPG to total sources of funds (internal sources plus total external sources) was made using published data for 1983-85 and nearly final estimates for 1986 (scheduled for release in the first week of May). For the four-year period, external funds from the FPG accounted for just under 25 percent of U.S. affiliates' total sources of funds. The annual ratio varied significantly, over 30 percent in both 1984 and 1986. The ratios would have been higher (in the range of 30-45 percent) and somewhat less volatile except for several affiliates in nonbank financing that had large, fluctuating, U.S.-source funds during that period.

7.Q. Has Commerce studied the effects of foreign investment on transfers of technology? If so, could you furnish the Committee a copy of your study?

A. No such report exists at this time. However, the United States recognizes that international direct investment frequently serves as a vehicle for transfer of technology and can benefit the economic development goals of both home and host countries. Technology transfers should be carried out on a sound commercial basis, subject to national security and foreign policy considerations. International direct private investment can act as a catalyst for employment and improve productivity.

8 Q. The Administration strongly supports the lowering of investment barriers around the world, arguing for a "free market" approach. If the free flow of capital is what the Administration desires, are you all concerned about the distortion caused by 50 states racing against each other to offer the most incentives to foreign investors?

A. With regard to incentives, competition among states to attract investment is unwise. However, at this time, states do not seem willing to forego these incentives. Under our system of government, states have a right to offer incentives to attract new capital. We doubt however, that the effect has been in the aggregate. New capital investments consider locating in certain U.S. states because of state tax rates, local tax rates, transportation facilities, proximity to markets, utilities and state government regulatory policies. Individual states are always trying to attract American-based corporations to locate within their borders. Likewise, states are free to attract foreign firms. In both cases, for an industry to flourish it needs the support of state and local government. It needs skilled productive workers and a location that offers a quality of life that will allow recruitment of professional and managerial talent. It is not the policy of this Administration to encourage states to offer greater investment incentives to foreign countries than to domestic companies.

9.Q. You have said in testimony that additional information on foreign investment is not needed -- yet, academics doing work in this field have often criticized the data ~~(sic)~~ available as being sparse, incomplete and untimely.

A. The Bureau of Economic Analysis collects a wealth of data on foreign investment in the United States by means of mandatory surveys of the U.S. affiliates of foreign companies. It collects the data needed for U.S. balance of payments purposes as well as extensive information on the financial structure and operations of the U.S. affiliates. It also obtains identification information on the U.S. affiliates, their foreign parents, and ultimate beneficial owners.

The attached description of BEA's data collection program indicates in more detail the types of data collected, the surveys conducted and the availability of published results.

The International Investment and Trade in Services Survey Act requires that the President, to the extent he deems necessary and feasible, conduct mandatory surveys of foreign direct investment in the United States. The President has delegated this responsibility to the Secretary of Commerce, who has, in turn, redelegated it to BEA. In addition, the Paperwork Reduction Act requires that BEA minimize the reporting burden on respondents.

BEA thus has a dual responsibility. It must determine if the information to be collected is both necessary for U.S. Government policy purposes and feasible for respondents to provide. BEA must weigh these two, often conflicting, responsibilities and strike a balance between them.

During the review process required by the Office of Management and Budget for each survey, the need for the data and the measures BEA has taken to minimize burden are closely scrutinized. Consultations are held with both data users and respondents to ensure that the needs of both have been met.

BEA believes that the data it collects are sufficient to satisfy the vast majority of statistical and policy needs of the U.S. government while not minimizing the burden on respondents. It would always be preferable, from a data users' standpoint, to have more information and more detail. Some academic users have expressed this viewpoint to BEA. However, respondents have indicated that the information BEA already collects is extremely burdensome to provide, particularly since companies do not normally maintain certain types of information in their normal accounting records. The most difficult types of information to provide are often in the areas of strongest policy interest, such as trade, employment, and data by State. BEA now requires considerable information in these areas, particularly in its benchmark survey. While some data users would like to have even more information, there is a limit on how much companies can reasonable be expected to provide and on how much it is feasible for them to provide.

BEA has made every effort, within the limits of available resources, to publish the results of its surveys as soon as possible. Last year, the Bureau accelerated the processing schedules of both its BE-15 annual survey of foreign direct investment in the United States and BE-11 annual survey of U.S. direct investment abroad by about five months -- from September/October to May/June. Thus, the latest results of both surveys were published five months earlier than the results for the results for the previous year.

The Bureau also plans to accelerate -- from about two years to twelve months -- the schedule for processing the 1987 benchmark survey of foreign direct investment in the United States (the BE-12). The due date for completed reports is May 31, 1988. Preliminary results are scheduled for publication a year later -- in mid-1989.

Any further acceleration of the processing depends partly on the availability of resources in BEA, but also on the due date for reports and the promptness of compliance by respondents. The current due date for BEA's annual surveys and for the benchmark survey is May 31. This due date was established in consultation with respondents and OMB. Respondents have indicated that they need time to close their books, prepare their annual financial statements, and file tax returns, before they can turn their attention to other Government reporting requirements. Indeed, they have recommended that due

10.Q. You testified in 1986 that the "Overall employment impact of foreign investment is uncertain. It probably has had a positive effect." Is this good enough information for public policy purposes?

A. Foreign direct investment in the United States is good for the economy and should be encouraged. As a result of such investment, the United States gains new factories, jobs, income, exports, and improved technology and better management techniques.

Foreign direct investment has a positive effect on the distribution of employment--helping to keep more people employed in manufacturing and strengthening local economies.

Foreign direct investment, like domestic investment, promotes real growth and increases the competitiveness of U.S. industry. To the extent that direct investment and portfolio investment help to promote economic growth and hold down U.S. interest rates, they also encourage domestic investment.

At year end 1985, nonbank U.S. affiliates of foreign firms:

- employed nearly 3 million Americans;
- had payrolls of more than $70 billion;
- paid about $8 billion in U.S. income taxes (plus additional state, county and local taxes);
- exported over $55 billion of merchandise

11.Q. You also testified that FDI increases competition within individual industries. Is that true in the U.S. tire business?

[Bridgestone has proposed buying Firestone's tire business, Pirelli is trying to buy Uniroyal Goodrich, Continental has bought General Tire and now the combined company is doing a joint venture with Toyo Tire and Yokohama Rubber of Japan, and Sumitoma has bought Dunlap. Goodyear is now the only large U.S. tire maker to have successfully fought off a foreign investor. It is now saddled with an enormous debt, and closed two plants last year.]

A. Yes, foreign direct investment has increased competition in the U.S. tire industry. What is important for the sake of maintaining a healthy competitive industry is that firms have access to capital and equipment. It is also important there is open competition in the capital market for ownership of firms so that firms are disciplined to use their productive assets efficiently, i.e. that management is forced to stay on its toes. The source of the investment capital is irrelevant. If the investment in new technology or plant is economically justified, it makes no difference whether the funds are provided by Japanese, European, or American investors. The U.S. benefits as the result of gaining new or improved productive assets. The factories stay here, and hopefully their performance is improved by the result of the infusion of new technology and/or management. Assuming the foreigners are acting with a modicum of rationality, they purchase control of these assets only because they believe they can be employed more profitably. If they are correct the foreign investors and the U.S. economy benefit. If they are wrong, the foreign investors lose, but the U.S. economy is no worse off than before since the assets remain in the U.S. available for use by other U.S. or foreign investors.

12.Q. The 1980 Benchmark Survey was published in October, 1983. Will we have to wait three years for the 1987 Survey?

A. No. Due to delays clearance, the 1980 benchmark survey forms were not mailed out until mid-June 1981. Responses were due to the Bureau of Economic Analysis on August 15, 1981. Processing--including follow up on late and delinquent reporters, editing and correction of report forms, processing and review of the data, designing tables for publication, and analyzing and publishing the results -- took about two years.

As noted in the response to question #9, the Bureau mailed out the 1987 survey forms at the end of February 1988 and responses are due May 31, much earlier in the year than for the 1980 survey. In addition, as a result of increased experience, more efficient edit procedures, and additional computer resources, BEA plans to accelerate the processing schedule for the 1987 survey from about two years to twelve months. Thus, preliminary results are scheduled for publication in mid-1989 with final results to be published a year later.

QUESTIONS FROM SENATOR EXON FOR UNDER SECRETARY ORTNER

The Relationship of Investment Bankers in Merger-Mania

Q. I would appreciate if I could have your observations regarding the role of investment bankers in the area of foreign take-overs. The Wall Street Journal reported in its March 14th edition a very interesting case regarding the Koppers Corporation and Sherson-Lehman-Hutton. The Koppers corporation alleges that the Sherson company approached the Koppers corporation and offered their services to advise Koppers in the event of a hostile takeover. I understand that Koppers said, "thanks but no thanks." Eight months later, the Sherson began assisting Beazer PLC, a British Corporation, in its effort to takeover Koppers. Not only that Sherson agreed to take a 46% equity position in the takeover group. I think that this is an interesting example. It places into the sunlight the new activist role of the investment banker. It also raises questions of conflicts of interest. At one time, investment banking was available when needed. As this case illustrates and the Goodyear case illustrates, investment bankers identify vulnerable companies and go out and seek hostile buyers. They are increasingly turning to foreigners to launch their attacks. I would be interested in the panel's observation of this case and the role of investment bankers.

A. I do not believe the role of Sherson-Lehman-Hutton in the Koppers Corp.-Beazer PLC negotiations is necessarily a negative factor, nor is the fact that Beazer is a British corporation. The question of conflict of interest also seems to be inappropriate in this case since there is no indication Sherson ever worked for Koppers or had access to any information not readily available to the general public.

Sherson's aggressiveness in the Koppers situation is an outgrowth of the free market system. Had Sherson not acted, other firms would undoubtedly have filled the void of both Sherson and Beazer. Had Sherson not acted on their knowledge and research regarding Koppers another investment banker would have reaped the profits. The income, profit, and jobs created as a result of Sherson's behavior contributes to overall economic growth just the same as any other more traditional economic activity.

In general, I believe the flow of capital from foreigners into the U.S. has a positive influence on our economy because it supplements the amount of savings available. Until the U.S. brings its budget deficits down and increases the domestic saving rate we must rely on foreign investors to help provide the capital necessary to invest in new plant and equipment and create new jobs.

The CHAIRMAN. Dr. Ortner, we thank you and Ms. Barker for your appearance here this morning, and we will move to Panel No. 1, which is Professor Susan Tolchin, Mr. Elliott Richardson—I have called him General, Secretary, everything else but mister—Governor Anthony M. Solomon, and I will call him Chairman.

Dr. ORTNER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Does that suit you folks, Professor Tolchin, and then Mr. Richardson and then Mr. Solomon?

We welcome you, all three of you, to the committee, and Professor, we will be delighted to hear from you. We know about your book, and obviously I know who did the research.

Did Marty let you do any of the writing?

STATEMENT OF DR. SUSAN J. TOLCHIN, PROFESSOR OF PUBLIC ADMINISTRATION, SCHOOL OF GOVERNMENT AND BUSINESS ADMINISTRATION, THE GEORGE WASHINGTON UNIVERSITY

Dr. TOLCHIN. He is a much better writer than I am.

Thank you, Senator Hollings.

It gives me great pleasure to be here this morning.

You have already mentioned that my testimony is drawn from a book that I co-authored with Martin Tolchin called "Buying Into America: How Foreign Money Is Changing the Face of Our Nation."

There is no question that foreign money is changing the face of our nation. It is rebuilding our cities, reshaping basic industries, building plants and providing jobs for many Americans. This trend is accelerating, spurred by a drop in the dollar, and evidence appears daily showing that this trend will continue to accelerate at least within the next few years. The daily headlines show Campeau's attempt to buy Federated Stores, Bridgestone's acquisition of the Firestone tire division, and the recent Saudi attempt to purchase Texaco.

This acceleration is encouraged by Americans. In fact, a leading investment banking house in New York has established a "bargain basement committee" for the purpose of identifying vulnerable American assets for its foreign clients.

Foreign investment has reached an all-time high of $1.5 trillion, three-quarters of which, as you know, is in government and private securities. Foreign investors now hold more than 10 percent of the nation's over $2 trillion debt, and it is also important to note at this point that approximately 20 percent of all foreign investment is held by foreign governments as opposed to private investors.

We can expect to see this trend accelerate for another reason: the relatively lax antitrust enforcement that will probably continue at least for the remainder of the Reagan administration, I think that firms will scurry to acquire what they can for fear of tighter enforcement in the next administration.

The point is that foreign investors are making inroads into vital American industries such as machine tools, banking, chemicals, automobiles, tire, auto parts and construction. Four of the nation's top chemical companies are now foreign-owned. Foreign investors have bought land, skyscrapers, land, shopping centers in almost

every state of the Union and hold large chunks of prime downtown real estate in cities across the nation.

Statistics appear almost daily on this issue as well. Half of downtown Los Angeles, we just learned, is held by foreign investors.

Foreign investment has affected the American economy with an impact that is just beginning to be felt. It has become a national issue, linked to America's new status as a debtor nation, and its deepening dependence on foreign money.

Foreign investors have also made inroads into American politics, making their presence felt at every level of the political process. If this continues, the threat of losing a measure of political and economic sovereignty becomes a real possibility. We have seen this happen on a variety of levels of American politics. As a matter of fact, the inspiration for this book was Senator Jim Sasser of Tennessee who told us that U.S. executives from the Nissan Corporation in his state were supporting his opponent just because he decided, for the moment, to assume a position of neutrality on domestic content legislation. These executives contributed to his opponent, held fundraisers, and engaged in political activity in a U.S. Senate election.

The point is, of course, that Nissan is a U.S. subsidiary of a foreign multinational corporation. When questioned about their political activity, Nissan executives admitted that they were getting their directions from the home office in Tokyo.

In California we watched the repeal of the unitary tax by 16 foreign governments backing their multinational corporations in that state. Prime Minister Margaret Thatcher lobbied the President who lobbied the Governor to change his position on the unitary tax.

It is interesting, because we uncovered a memo from President Reagan when he was Governor Reagan opposing the repeal of the unitary tax as an infringement on his state's sovereignty. That is an interesting bit of trivia, but it does show that where you are is where you sit, to some extent.

But in California we saw that the foreign multinationals were formulating the issue and having an impact on a state tax policy, without getting into the merits or demerits of the unitary tax.

It is time to ask some questions about the long term effect of foreign investment, and I am glad that the legislators in the Senate and the House of Representatives are beginning to ask these questions. The first question is: What are the effects of increased competition among the states and cities for foreign investment? Governors and mayors are tripping over each other in foreign capitals all over the world, and are in fact engaged in a form of economic fratricide. They vie with each other to see who can offer the most tax abatements, grants, real estate and loans, while the foreign multinationals sit back and wait for the best bargain.

The big secret is that foreign companies come to the United States primarily to make money, to corner market share and avoid protective tariffs. They would come without wasting the taxpayers' money on these incentives. Toyota, which came to Kentucky for $125 million in (incentives the newspapers in Kentucky put the figure more accurately at $350 million in incentives) had every intention of coming to the United States because they wanted to

produce cars here. Foreign investors are very smart. They sit back and wait for the best bargain.

In effect, the U.S. is subsidizing the surge of foreign investment without assessing its impact on the nation.

The second question, and this is really the point of this hearing today, is what is the impact of inadequate data collection? The U.S., I think, is flying blind on foreign investment. We found in our study that at least 50 percent of all foreign investment goes unreported. Lax reporting requirements, hidden ownerships and other circumventions of the law have made it virtually impossible to keep track of foreign money.

Urban real estate is the hardest to track, followed by agricultural land, manufacturing and securities. Areas that we think are in most need of improved systematic information gathering include the technology drain (where are foreign investors investing to acquire technology); the money drain (In 1985, which is the last year for which we have accurate figures, 79 percent of the profits of foreign owned U.S. firms were repatriated back to the foreign parent); and the industry drain (What industries can the nation afford to lose, or put another way, in what industries should we reserve an American component?).

The percentage of banking assets in the United States is now almost 21 percent, up from 17 percent last year. Five of the ten largest banks in California are now foreign owned. What happens when 50 percent of the nation's banks are foreign owned? Or 80 percent? Or does it matter at all?

This is not for me to decide but for policymakers at all levels of government. We cannot decide this without adequate information, and a full discussion on some of these questions. Other areas in need of fun the information include—

The government connection. As I mentioned before, 20 percent of all foreign investment is government investment. Do foreign government investors have agendas inimical to U.S. interests, and where? We need more information on this.

The preemptive strike. What industries are being driven out of business by unfair competition from foreign investors? In effect, since many foreign investors are being subsidized by us and very often by their own governments, they get a double benefit by coming here and receiving hundreds of millions of dollars in taxpayers' money; it is cheaper for them and much more costly to the American taxpayer.

The fairness issue. We get into that to some extent with the question of data collection. There are enormous barriers in other countries, particularly countries with whom we have trade deficits, to foreign investment, and I think that that is an issue that would be addressed if we had better data.

There is also the question of fairness in terms of data collection, and we have already heard this morning about the inequities in data collection on the part of other countries.

What is the impact of foreign investment on national security? We found that Americans are so hungry for foreign money that they are often blinded to the problems of national security and fail to take appropriate steps to monitor the source of foreign funds and protect themselves until it is too late.

We have a chapter in our book on how the Soviet Union purchased four banks in California's Silicon Valley until a CIA official aborted the sale when he identified the middleman as a front for the Soviet Union.

This led the late CIA Director William Casey to warn that foreign investment was a Trojan horse, friendly on the outside but carrying a threat to American security within with certain investments. He was most concerned about the acquisition of technology vital to national security.

What laws unfairly discriminate against U.S. companies in favor of foreign companies? Banking, antitrust and debt-equity ratios are just a few of these laws that discriminate against American companies in favor of foreign companies.

The most important issue, I will say in conclusion, focuses on the erosion of American political and economic independence that has just begun to emerge. Firms must protect their investments. I do not blame them. America is no more immune from their influence than Brazil. Backed by their governments, foreign companies have plunged into American politics, they have entered U.S. elections, formed their own PACs, changed state tax laws, and successfully lobbied Congress for a range of grants and tax abatements. The manner in which the nation's leaders respond to foreign investment will determine how we meet the most difficult challenge of our time, to retain U.S. sovereignty in the global economy.

[The statement and questions and answers follow:]

STATEMENT OF DR. SUSAN J. TOLCHIN, PROFESSOR OF PUBLIC ADMINISTRATION, SCHOOL OF GOVERNMENT AND BUSINESS ADMINISTRATION, THE GEORGE WASHINGTON UNIVERSITY

I welcome this opportunity to testify on the subject of foreign investment in the United States. My comments are drawn from *Buying Into America*—How Foreign Money is Changing the Face of Our Nation, co-authored by Martin Tolchin, and published last month by Times Books/Random House.

Foreign investment is changing the face of America, the lives of Americans, and the nature of our political processes. A surge of foreign money is rebuilding the nation's cities, reshaping basic industries, and building manufacturing and assembly plants that are creating jobs for millions of Americans. Mayors, governors and public officials are circling the globe in quest of foreign funds, with the intensity of third-world ministers trying to stave off the financial collapse of their shaky governments.

This trend is accelerating at a rapid pace, spurred by the drop in the dollar. Evidence of the surge in foreign investment appears in daily headlines announcing Campeau's attempt to purchase Federated Stores, the Bridgestone acquisition of Firestone's tire division, and the Saudi offer to buy Texaco, to name a few. A leading investment banking firm in New York has established a "Bargain Basement" committee for the sole purpose of identifying vulnerable American assets for its foreign clients.

At this point, foreign investment has reached a record $105 trillion, a significant increase from $196 billion in 1974. About three-quarters of this investment is in government and private securities, so-called portfolio investments, with foreign investors now holding more than $200 billion—or one-tenth—of America's $2 trillion national debt. It is important to note that 20 percent of all foreign investment is held by foreign governments, as opposed to private investors.

Foreign companies are buying up American oil and gas companies at a rapid rate and are making significant inroads into a host of other industries, including the construction industry, machine tools, automobiles, auto parts, and tire production. More than half the nation's cement industry and four of the nation's top ten chemical companies are foreign owned. Foreign investors have bought land, skyscrapers and shopping centers in virtually every state of the union, and hold large chunks of prime downtown real estate in cities across the nation. More than 16 percent of

total U.S. banking assets are owned by foreign investors, and the figure is climbing. Foreign investors also have become the new lions of Wall Street, indicated by recent purchases of investment banking firms.

The surge of foreign investment has occurred without a national debate, and with only scant attention paid by Congress and the executive branch. This is clearly a national issue, which begins with America's increasing dependence on foreign investment and what this means to the future of our country.

Foreign money has affected the American economy with an impact that is only beginning to be appreciated. Part of a shift toward a global economy, foreign investment continues to be coveted—and, indeed, subsidized—by American taxapayers, at the behest of political leaders who are motivated by the very real need to create jobs and finance the deficit. But we must recognize that the price may be high. Some of these foreign investors have hidden agendas, including the destruction of American competitors and the acquisition of American technology; many are motivated by a desire to avoid protective tariffs and view foreign investment as part of their nation's export strategy, to increase their market share.

Most important of all: foreign investors have emerged as key players in American politics, making their influence felt on every level of the process. If this continues, the threat of losing a measure of political and economic sovereignty becames a real possibility.

In an ideal world in which free trade and barrier-free investment were the rule rather than the exception, the U.S. laissez-faire position would make sense. In the real world, it raises questions about the collective long-term effect of the nation's deepening dependence on foreign money.

Some of the questions that can be addressed by Congress include the following:

1. What are the effects of increased competition among the states and the cities for foreign investment?

The states are engaged in economic fratricide. They vie with each other to see who can offer the most tax abatements, grants, real estate loans, while the foreign multinationals sit back and wait for the best bargain. While our trading partners carefully coordinate their policies toward foreign investment, the United States has embarked on a free-for-all that can only make it less competitive in the long run if it continues to dissipate its resources in this way.

Such state and local incentives play minor role in the decision to invest. Foreign companies come to the United States primarily to make money, corner the lucrative U.S. market, avoid protective tariffs and acquire new technology. No one doubts that Toyota had every intention of locating a plant in the United States with or without $125 million in incentives from Kentucky. Taxpayers are beginning to question this unnecessary expenditure of the hard-earned money and, in some cases, turning the political leaders who were responsible for these giveaways out of office.

The rush to inundate foreign investors with incentives rests on the assumption that all foreign investment is beneficial. In effect, the U.S. is subsidizing the surge of foreign investment without assessing its impact on the nation.

2. What is the impact of inadequate data collection?

The U.S. is flying blind on foreign investment. No one knows the full extent of foreign investment, and some experts believe at least 50% of all foreign investment is unreported. Lax reporting requirements, hidden ownerships, and other circumventions of the laws—many of them already riddled with loopholes—have made it virtualy impossible to keep track of the flood of foreign money. Urban real estate is probably the hardest to track, followed by securities, manufacturing, and agricultural land.

Areas most in need of improved, systematic information include:

The technology drain. Where are foreign investors investing to acquire American technology? What effect does this have on the national defense and on American industry? In the case of joint ventures, where does the R & D end up? In the United States or abroad? What will Japan's investment in Boeing, for example, do in the long run to America's lead in the aerospace industry—they last high-tech industry in which the United States is still predominant?

The money drain. Where are the profits going? Is foreign investment as good for the American economy as it's supporters claim? Do most of the profits return abroad? In 1985, 79% of the profits of foreign-owned U.S. firms were repatriated back to the foreign parent.

The industry drain. What industries can the nation afford to lose? Can the United States afford to lose the aerospace or semi-conductor industry to foreign interests? Can it afford to sell off its natural resources as rapidly as foreign investors can buy them up?

The government connection. What is the difference between individual foreign investors and foreign governments? Should government records differentiate them? In 1987, for example, foreign governments replaced private investors as the major purchasers of U.S. government securities. In a dramatic turn of events last May, these governments declined to bid on a $29 billion offering of T-bills until the terms were improved. Treasury officals capitulated, solidifying the position of foreign investors, who would henceforth play an even greater role in determining U.S. interest rates and setting the course of the U.S. economy.

The preemptive strike. What U.S. industries are being driven out of business by unfair competition from foreign investors? Is there a level playing field, or are some companies being subsidized by their governments?

The fairness issue. Most countries restrict foreign investment, failing to reciprocate the warm welcome their nationals receive in the United States. Investment barriers remain a real problem to American investors, mirroring the trade barriers faced by manufacturers seeking to export their products.

Attempts to improve data collection, such as the Bryant amendment now before the trade conference, have been met with intense lobbying, led by representatives of foreign multinationals and the governments that back them. Members of Congress and their staffs were warned that any effort to improve disclosure would lead to drastic reductions in foreign investment. The proof? Only the fact that legions of lobbyists said it was so. No one has seen any data to back up this threat, but few have questioned its legitimacy.

Faced with threats of retaliation from their foreign counterparts, some major U.S. multinationals have joined the effort to beat back improved disclosure. One wonders what form that retaliation would take, since other industrialized nations scrutinize foreign investment very carefully. (In fact, many of them limit investment in land, high tech industries, manufacturing, banks and the media.) What do they know that we don't? They know that countries can't make decisions on the basis of incomplete information.

3. What is the impact of foreign investment on national security?

It is a mistake to allow any country to get control of businesses vital to the national defense. This issue arose at the time of the impending acquisition of Fairchild Semiconductor—already controlled by Schlumberger, Ltd., a French firm—by Fujitsu, Japan's largest computer company. Fairchild makes the components for the supercomputers that make or break codes and target nuclear weapons; they are a vital part of Star Wars research. The acquisition of foreign firms of such vital industries led the late CIA Director William Casey to warn that foreign investment was a Trojan horse, friendly on the outside yet inimical in many ways to the nation's interests.

The national security question is broader than supercomputers. We must ask questions about a host of other industries and their relationship to the national defense. Are there any other industries where we should reserve an American component? Tire production? Real Estate? Machine tools? Oil? Banks? Telecommunications? Should there be a limit on foreign ownership, and if so, how much?

Americans are so hungry for foreign money that they are oftern blinded to problems of national security, and fail to take appropriate steps to monitor the source of foreign funds and protect themselves against hostile incursions until it is almost too late. Several years ago, for example, the Soviet Union was able to purchase four banks in Silicon Valley through Moscow Narodny, its overseas bank. The sale was aborted by an alert CIA official who recognized the Singapore businessman acting as a front for the Soviets. Had they been able to complete the sale, Soviet agents would have had access to U.S. technology, as well as the financial structure of Silicon Valley—where they would have been able to identify the individuals most susceptible to financial pressure.

4. What laws unfairly discriminate against U.S. companies in favor of foreign companies?

What laws, for example, are not being enforced for fear of losing foreign investment? Are federal and state officials afraid to enforce labor laws, affirmative action laws and antitrust laws for fear of discouraging foreign investors? What loopholes in American election laws should be plugged to prevent undue influence from foreign governments and foreign multinationals?

For a period of time, U.S. banking laws discriminate against American banks in favor of foreign banks. U.S. banks were prohibited from interstate banking, while foreign banks could operate across state lines. Foreign banks took full advantage of this inequity and cornered a large share of the American market. Their head start continues, as capital rich nations buy into our nation's banking assets. In the largest purchase to date by the Japanese in an American financial institution, the Bank

of Tokyo recently purchases the Union Bank in Los Angeles for $750 million. The Union Bank is California's fifth largest bank with assets of $9 billion. This means that Japan will now control five of California's ten largest banks.

These questions represent a small sample of the issues raised by the surge of foreign investment in the United States. The larger issue focuses on the erosion of American political and economic independence that has compromised officials on all levels of government. Money is rarely neutral, as any former colony can tell you. Firms must protect their investments, and America is no more immune from their influence than Brazil. Backed by their governments, foreign companies have plunged into American politics: They have entered U.S. elections, formed their own Political Action Committees, changed state tax laws, and successfully lobbied Congress for a range of grants and tax abatements.

New evidence has recently come to light indicating serious public concern about foreign investment. Smick-Medley Associates, a Washington consulting firm, released a survey showing that the public was "restless and concerned" about growing foreign investment in the U.S., with 78% of those polled favoring a law to limit the extent of foreign investment in business and real estate.

Those who have ventured forth to look at the policy implications of foreign investment are often labelled "protectionist," "xenophobic," and "racist." It is easier to attack with cliches than to deal with substantive issues; it is a quick and effective way of dismissing problems that call for more thoughtful consideration.

It is time for responsible leaders to take a long, hard look at their country's growing dependence on foreign capital. It is too reminiscent of America's dependence on foreign oil, and just as we shook ourselves loose from OPEC cabal, we must reduce our craving for foreign money. The U.S. is sinking deeper and deeper into the condition of a developing country: importing capital when as recently as 1982 it was the world's largest creditor nation. Advanced countries export capital, and that's the company this nation should keep.

I applaud America's entry into the global economy, but the forces of the international marketplace have overwhelmed America's capacity to deal with them. The Surge of foreign investment is one important example. The manner in which the nation's leaders respond will determine how we meet the most difficult economic challenge of our time: to retain U.S. sovereignty in the global economy.

Questions of the Chairman and the Answers

Question. 1. Do we have any sure way of knowing who is investigating? What is coming in? Where is it from?

Answer. No one knows the full extent of foreign investment in the U.S. Lax reporting requirements, hidden ownerships, and other circumventions of the laws have made it virtually impossible to keep track of the flood of foreign money. At least 50% of all foreign investment is unreported.

Even in the category of reported foreign investment, the increase is dramatic: more than $1.5 trillion in foreign investment has poured into the country, a significant increase from $196 billion in 1974. Approximately 80 percent of this foreign investment is in government and private securities, foreign investment is in government and private securities, so-called portfolio investments, with foreign investors holding between 10 and twenty percent of America's national debt. In addition, foreign investors now 21% of the nation's banking assets, more than $300 billion in diversified stocks and bonds, more than $100 billion in real estate, and $200–300 billion in direct investments of factories, warehouses, and assembly plants.

The British lead the list of investors, followed by the Dutch, who benefit from their stake in Royal Dutch Shell. Japan has just overtaken Canada as the third major investor; if the Japanese continue to invest at their current pace, they will probably overtake Britain and the Netherlands before 1990. Now the world's leading capital exporters, the Japanese are reaping the benefits of their high rate of savings and commitment to industrial competitiveness.

It is important to note that 20 percent of all foreign investment is owned by foreign governments, as opposed to private investors. The Kuwait Petroleum Company, a wholly-owned subsidiary of the Kuwaiti government, has acquired Santa Fe International, formerly a U.S. multinational corporation.

Question 2. What about our competitors? Do they monitor foreign investment more closely?

Answer. Our major trading partners monitor foreign investment much more closely than the United States. They find they need this information in order to screen investments they find inimical to their national interests. I found this area of

inquiry, which is really peripheral to my own study, very difficult to research. There is virtually no information in the academic literature, in government reports, or in the popular press. Foreign embassies in the U.S. will not release information on this subject, and the relevant U.S. government agencies are reluctant to collect it. The only way to get reliable information is to query U.S. businesses that have tried to invest abroad. They report extensive bureaucratic quagmires, and other assorted mechanisms that all point to the same thing: extensive and thorough monitoring of foreign investment.

Question 3. Your testimony raises many issues that should be addressed by Congress. Currently, the Bryant amendment requiring registration of foreign investment is pending in subconference 7 of the trade conference. Please comment on that provision.

Answer. The Bryant amendment would go a long way toward correcting the deficiencies in information collection on foreign investment. We need much better data on inflows of foreign money, especially where vital industries are affected. The machine tool industry, which is now 25% foreign-owned, is a case in point. Major investors who wish to hide their assets can avoid disclosure through a variety of legal maneuvers: the Bryant amendment would make these circumventions more difficult.

Over two dozen federal agencies collect information on foreign investment. Through no fault of the agencies, which are limited by the statutes that govern their activities, the information is fragmented, incomplete and—occasionally—inaccurate.

The Byrant amendment is a simple disclosure amendment. It does not restrict foreign investment in any way. Many of the privately held companies that would be covered by the amendment are publicly traded in their home countries. Improved disclosure would help communities and unions access the information they need to make more informed decisions when they negotiate low-cost bonds, tax incentives, wage concessions, and a host of other issues with foreign-owned companies.

Question 4. As a professor and author in the public policy area, you are familiar with the quality and availability of data on foreign direct investment. In our testimony, you say, "No one knows the full extent of foreign investment." What can the Congress do to provide policy makers with the necessary information? And what specific type of information do academics need?

Answer. Of the four books, and dozens of articles and papers I have written, the field of foreign investment was clearly the most frustrating. By the best estimates, at least 50% of all foreign investment goes unreported. The policy implications of inadequate data, however, reach far beyond the researcher's quest for solid information. The nation is flying blind on the issue of foreign investment: Its origins, the real owners, and accurate figures on the dimensions of this investment. Without this information, the government will never be able to arrive at a national perspective that will address not merely whether specific foreign investments were good for Tennessee, California, New York or Nebraska, but for the entire nation.

Over two dozen agencies collect information on foreign investment in the United States. Congress could improve data collection efforts by designating one agency as the lead agency, and strengthen that agency's mandate to coordinate information into a central repository. Congress could also close existing loopholes in the agencies responsible for specific areas of data collection, and strengthen the agencies' ability to investigate those areas of inquiry that have proved elusive to government scrutiny. Specific data gaps that could be addresssed by congressional action include the following:

U.S. Department of Agriculture. The act governing the USDA's foreign investment reporting (AFIDA—Agricultural Foreign Investment Disclosure Act of 1978) contains a loophole that affects the accuracy of the data collection: the department is prohibited from investigating beyond three layers of incorporation, making it relatively easy for foreign investors to mask their identity as well as their nationality through dummy corporations.

Securities and Exchange Commission. The SEC organizes its data under the name of the U.S. corporation. This means that each company would have to be checked separately to determine foreign ownership, a task so onerous as to limit the usefulness of the SEC for the purpose of data collection on foreign investment in portfolio investments.

Department of Commerce. Two agencies in the Commerce Department are responsible for collection of information on foreign investment: the Bureau of Economic Analysis and the Office of Trade and Investment Analysis. The OTIA is restricted to public and secondary sources, and cannot access BEA data. BEA publishes its data in aggregate form, with the names of specific investors kept confidential by law:

even members of Congress and other federal officials are barred from accessing these data. Some critics charge that BEA has missed some aggregate data, due to loopholes in the law that preserved the anonymity of foreign investors. In addition, BEA publishes benchmark surveys every five to nine years which, while useful, are too infrequent given the fast pace of foreign investment and its impact on the American people.

Department of the Treasury. In order to attract investment in U.S. Securities, the Treasury Department has acceded to the requests of foreign investors, and refused to disaggregate investments on a country-by-country basis. Instead, they publish investments under categories that mask the country of origin, such as Other Asia, Other Africa, and Middle East OPEC.

Real estate. No federal agency collects or analyzes data relating to urban and residential real estate. This is perhaps the most glaring data gap, particularly now, as foreign investors, spurred by the drop in the dollar, accelerate their investments in prime downtown real estate in the nation's most important cities.

Question 5. From a public policy standpoint, what is the effect of the inconsistency between state and national policy?

Answer. A new wave of activity sees mayors and governors circling the globe in search of foreign funds, with the intensity of third-world ministers trying to stave off the financial collapse of their shaky governments. Watching the states scramble for the foreign dollar raises the question of how this fits into a larger context. What are the ultimate consequences for the United States if fifty separate states make their own individual agreements with foreign governments and foreign multinational corporations. Does this put America, the only industrialized country that allows separatist tendencies to flourish, at a competitive disadvantage in the global economy?

In effect, the states are conducting a form of individualized foreign economic policy, unhampered by either executive branch leadership or congressional oversight. In many instances, the effects are positive, or negligible for the economy. But what if a state lures a foreign manufacturer whose presence threatens a domestic manufacturer in another state? What if a foreign government is subsidizing that investment with low-cost loans and other incentives, sustaining a company's losses until the market is cornered and domestic competitors are driven out of the business? Or what if that manufacturer acquires, through its investment, technology vital to the nation's security or industrial stability? The truth is that we don't know the answers to these questions; we don't have adequate information to assess their impact; and, due to intensified political pressures, most policy makers prefer to remain in the dark where they can avoid addressing the issue.

Other issues flow from the question of the states' new role in recruiting foreign investment. One of the most important involves the cost to the taxpayer of subsidizing foreign investment. In the heated competition for these investments, the states go head-to-head, offering a smorgasbord or inducements to potential clients—tax holidays, low-cost loans, new roads, sewers and other public improvements, and industrial development bonds. Some packages amounts to tens of millions of dollars per state: Toyota received $125 million in incentives; Volkswagen, $94 million, to name a few.

Many wonder whether these subsidies are worth the investment, or whether they are giveaway programs that have escaped public notice. What is clear is that these companies intend to locate in the United States for reasons other than incentives—for profit, for market share, and to avoid protective tariffs. Foreign investors have learned to take advantage of interstate competition; they sit back and wait for the best deal.

In effect, state officials are forced to be myopic; it comes with the territory. Their concerns begin and end with jobs and the tax base, and long-range national concerns remain out of the picture. In effect, their policy has become national policy, since the federal government, supposedly the guardians of the national interest, has abdicated to state leadership.

Question 6. You state in your testimony that foreign direct investment has threatened our political sovereignty. Please elaborate on this point with examples from your research.

Answer. Americans are paying a price for the acceleration of foreign investment with a loss of a measure of political independence. The political activity generated by foreign investors becomes more visible daily. Senators have indicated that foreign investors attempt regularly to influence their position on trade legislation. "You get an immediate reaction when you introduce a piece of legislation that affects these foreign investors," said one Senator. "The don't just stop at the Washington level. You hear from their distributors and contractors back home right away.

Foreign investors can play hardball when they feel strongly about an issue. Executives of Sony of America, a subsidiary of the Japanese company, threatened both the Florida and California legislatures with cancellation of plans to build facilities in their states unless the unitary tax was repealed. The influence of foreign investors penetrated a closed meeting of the House Ways and Means Committee, which granted an exemption in the 1986 tax bill to Esselte Pendaflex Corporation, an office-products company in Garden City, L.I., a wholly owned subsidiary of Esselte, A.B., a Swedish corporation.

The political interests of foreign investors transcend issues of tax and trade. A Japanese-owned pulp mill in Sitka, Alaska, played a leading role in the 1984 congressional defeat of the Clean Water Act. Korean investors opened a newspaper in Washington, D.C., with the stated intent of changing the political climate of the nation's capital.

The electoral activities of foreign investors have also accelerated. Wholly foreign-owned American companies have formed more than 100 PACs (Political Action Committees) which contribute to congressional elections. Their activity has been a source of considerable debate generated by members of Congress, who question the legitimacy of foreign nationals playing such a significant role in American politics.

Question 7. According to your testimony, "foreign companies come to the United States primarily to make money, corner the lucrative U.S. markets, avoid protective tariffs, and acquire new technology. Do you believe that a reporting requirement would inhibit foreign investment from coming into this country?

Answer. There is not a shred of evidence that disclosure would inhibit the inward flow of investment. Other countries have more stringent reporting requirements and it has not inhibited their inward investment—except when they want it to. It is a matter of national pride that we ignore these threats of retaliation and investment withdrawal and act in the best interests of our country.

Improved reporting would add considerably to the next phase of information gathering: interpreting the data. We need to know what foreign investment means to the U.S. economy, and to its competitive position in the world. Specifically, we need to know more about:

—The technology drain. Where are foreign investors investing to acquire technology? What effect does this have on the national defense and on American industry?

—The money drain. Where are the profits going? In 1984, 55 percent of the profits of foreign-owned U.S. subsidiaries were repatriated back to the foreign parent, whereas in 1985, the figure increased to 79 percent.

—The industry drain. What industries can the nation afford to lose? Can the U.S. afford to lose the aerospace or computer-chip industries to foreign interests? Can it afford to sell off its natural resources as fast as foreign investors can buy they up?

—The preemptive strike. What U.S. industries are being driven out of business by unfair competition from foreign investors?

—The government connection. What is the difference, if any, between individual foreign investors and foreign governments as investors?

—Local, state and federal subsidies to foreign investors. How much is being spent? Where is it being spent? How do these incentives affect U.S. competitors?

Question 8. Why should the members of this committee, as policy makers, worry about the fact that 20% of all foreign investment is held by foreign governments rather than private investors? What sort of hidden agenda should concern us?

Answer. In 1987, foreign governments replaced private investors as the leading purchasers of government securities. Alan Greenspan calculated that in the first three months of 1987, the central banks of Japan, Canada and Western Europe provided most of the money needed to finance the U.S. trade deficit. The questions that trouble many policy makers are: What will these governments demand in return? And how long will they continue to bail out the United States?

These fears were realized in May 1987, when foreign investors (primarily the aforementioned central banks) temporarily declined to bid on the sale of $29 billion in T-bills, needed to finance the deficit. After two days of waiting, the treasury reduced the price of the thirty-year bills and raised the yield, prompting foreign investors to return to the market. The lesson of the bond sale was clear: foreign governments were beginning to influence U.S. interest rates.

Senator EXON [presiding]. Professor Tolchin, thank you very much.

We are going to recognize you, Mr. Richardson, but Senator Hollings is due back in a moment. We were trying to keep this going. I

have to recess and go vote, and we will reconvene upon the return of the Chairman.

[Brief recess.]

The CHAIRMAN. The committee will please come to order.

We apologize for the interruption.

Secretary Richardson, we would be delighted to hear from you, sir.

STATEMENT OF ELLIOT RICHARDSON, ON BEHALF OF THE ASSOCIATION OF FOREIGN INVESTORS IN AMERICA, ACCOMPANIED BY SAMUEL ROSENBLATT

Mr. RICHARDSON. Thank you very much, Mr. Chairman. I appreciate this opportunity to appear before you today.

I am doing so as a partner in Milbank, Tweed, Hadley & McCloy but also on behalf of the Association of Foreign Investors in America.

AFIA's goal is to represent the broadest possible range of foreign and American interests, including State and local governments.

I am accompanied by Dr. Samuel Rosenblatt on my right, the association's president, and an international economist.

Mr. Chairman, I have a long, powerful, well-reasoned, and well-supported statement which, of course, I would welcome having incorporated in the record.

The Chairman. It will be included, and you can emphasize as you wish.

Mr. RICHARDSON. Thank you, Mr. Chairman. I would like particularly to highlight those parts of the statement that bear most directly on the issue before this committee, which is, of course, whether or not it is desirable to incorporate into the statutory law of the United States provisions along the lines of those embodied in the Harkin and Bryant Amendments.

This seems to me to be a question that falls roughly under three headings, all of which have been touched on and, indeed, which your own questions have pointed up.

The first question is, what need is there for additional reporting over and above that already required by various laws now on the books?

A second question is, are the provisions of the proposed amendments themselves fair, or are they discriminatory?

The third question is, what would be the possible effect on foreign investment in the United States if amendments along these lines were adopted?

The case, I think, has been well established here this morning as to the desirability and importance of foreign investment in the United States. The questions that we have just heard from Professor Tolchin are questions that do, to be sure, bear on the policies that we may wish to adopt in the long term as possible modifications of the fundamental and traditional position of the United States favoring the freest practicable flow of investment into the United States. She did at one point touch on the bearing of information on the process of answering these questions. Beyond that, most of them are clearly questions that can be addressed on the basis of the kind of data that we now have. Nothing in the Bryant

Amendment, for example, will tell us whether or not it is a good thing for states to compete with each other for foreign investment or whether they can justify the expenditure entailed in maintaining foreign offices. Most of her other questions are of this sort.

I think that what really needs to be considered is whether any better answers could be obtained than those that can be obtained under the existing provisions of U.S. law and the analysis that can be brought to bear with the existing data.

There is, as we have heard, the International Investment and Trade in Services Survey Act, and Ms. Barker spoke to the manner in which the Commerce Department's benchmark survey is conducted and the kinds of analyses that are employed by the Bureau of Economic Affairs.

It is not obvious to me that the kinds of data to be generated under the Bryant Amendment would be as valuable in addressing the policy questions that have been raised here as the data that are collected under the benchmark survey, which as Mrs. Barker pointed out, are updated quarterly and annually.

Moreover, there is the Agricultural Foreign Investment Disclosure Act. Senator Pressler alluded to the data with respect to the purchase of agricultural land which has to be reported to the Secretary of Agriculture within 90 days of the investment if an individual investor holds a 10 percent interest or if separate investors together hold at least a 50 percent interest.

There is the Department of Energy Organization Act that requires the Department of Energy to report to Congress to the extent practicable on foreign ownership or control of U.S. energy sources and supplies, including the magnitude of annual foreign direct investment in the U.S.

The Energy Act requires the Administrator of Energy Information to catalog for public use the types of information collected by the Energy Information Administration. However, as the legislative history indicates, Congress did not intend that this Act require or result in the public disclosure of information and, if in fact, protected from such disclosure by law.

Then there is, in addition to all these provisions, the Foreign Investment in Real Property Tax Act that requires foreign investors owning U.S. real property to file annual information returns with the Internal Revenue Service, which, like all tax filings, are confidential.

It would seem to me, Mr. Chairman, that there rest[illegible]e proponents a substantial burden of proof as to the need, as a matter of public interest, for additional reporting requirements, particularly when the reporting requirements in issue are as burdensome as those that would be called for by the Harkin and Bryant Amendments.

With respect to portfolio investors, the provision that is still in the Bryant Amendment for the public disclosure of the names and other information, including ultimate beneficial owners, is enormously onerous, if not impossible, to administer since many beneficial owners are not readily determinable. For example, if a large publicly-owned foreign bank bought $250,000 of U.S. securities for its own account, it would be required to trace all of the shareholders of the stock in whatever form it is held by individuals or insti-

tutions. If it bought securities for a non-U.S. customer, it would be required to breach customer confidentiality. Moreover, as previously noted, the registered investor would have to provide an English translation of any public financial disclosures filed in the home country and would be subject to reporting in the future such other information as the Secretary of Commerce may require.

The amendments would impose substantial additional costs on the government to monitor and enforce compliance. A substantial bureaucracy would have to be set up.

You pointed out, Mr. Chairman, that a ballpark guess as to the numbers of enterprises covered would be on the order of 23,000, of which 90 percent are private companies that do not report under U.S. securities law. These companies, the existing provisions for confidential communications that I have already touched on, entail an already larger Federal reporting requirement than would apply to U.S. private companies.

In this case, the registration requirement goes far beyond anything that we require of domestic companies. In this respect, it is significantly discriminatory.

It would be, as we point out, subject to formal complaints in the OECD, as contrary to the U.S. obligation to liberalize our markets under the Code of Liberalisation of Capital Movements and it would, most simply stated, violate the national treatment standard in our international commitments.

This has been touched on insofar as it has been the consistent policy of the United States for many years to try progressively to break down impediments of one sort or another to the flow of U.S. investment into other countries.

Again, of course, we come back to the fundamental interests of the United States in the long term of encouraging the free flow of investment as we encourage the free exchange of goods and services.

We have seen this as being in our own interest and the interest of the world economy as a whole and, quite clearly, we would be weakening our ability to bring about the progressive reduction of barriers to investment in other countries if we were suddenly to reverse our policy internally.

There are other objections to the legislation that come under the heading of vagueness and ambiguity. For example, section 703 requires that the ultimate beneficial owner must register, but the section does not define that term. If a publicly-owned foreign company acquires a controlling interest in a U.S. asset, must a foreign company register or its shareholders?

Finally, Mr. Chairman, we have come to the question that has been touched on a number of times and which I certainly cannot answer in any definitive way. What would be the effect of the adoption of these amendments on the flow of investment? Would it deter it? Would it "chill it"?

As has been previously testified today, obviously nobody can offer a quantified answer to that question. It is like many other issues of policy, therefore. Has a sufficient justification been made for the adoption of legislation that, on its face, very well could have that effect, and that, in any case, moves in a direction away from the

fundamental, long-term policies that the United States has stood for throughout its history?

I would submit, Mr. Chairman, that the case has not been made, that we do have the data required to address the kinds of policy issues that have been touched on here today. To a certain extent, these questions are questions that fundamentally reflect a kind of fear or suspicion of foreign investment just because the owners of a property are not American.

I must say, when I heard Senator Pressler say that anybody would be disturbed by the thought that the hotels in Hawaii are owned by Japanese, I had to exclude myself. It does not bother me at all. Indeed, it gives me some reassurance that they are going to be very well-run hotels.

In short, Mr. Chairman, if it ain't broke don't fix it. We are doing a fine job attracting foreign investment. We have ample means of addressing the questions of policy that have been touched on here today. We should, in any case, be very wary that we do not take action that could, in light of the economic consequences, have the effect of actually reducing the flow of investment into the United States.

[The statement and questions and answers follow:]

STATEMENT OF ELLIOT L. RICHARDSON ON FOREIGN DIRECT INVESTMENT IN AMERICA

I. INTRODUCTION

Good morning, Mr. Chairman. My name is Elliot Richardson. I am a partner in the international law firm Milbank, Tweed, Hadley & McCloy, and I appear before the Committee today on behalf of the Association of Foreign Investors in America ("AFIA"). I am accompanied by Samuel Rosenblatt, AFIA's President and an international economist.

AFIA is an association of multinational corporations both U.S. and foreign which share a common concern: the free movement of capital in response to market forces. AFIA's non-U.S. members represent a variety of nationalities and industries. These companies are concerned that the U.S. will erect barriers to the free flow of capital. Like U.S. industry generally, AFIA's members have two principal and interrelated concerns: they need to attract foreign capital to conduct their U.S. operations and they fear that the erection of barriers to foreign investment in this country lead to reciprocal action by other countries, which would adversely affect American interests.

A. The U.S. Government Has Traditionally Welcomed Foreign Investment

The United States has traditionally welcomed foreign investment that flows according to market forces.[1] The federal government has treated foreign investors in the same manner as U.S. investors and has worked at the bilateral and multilateral levels for the nondiscriminatory treatment of U.S. investments abroad.

The United States has viewed foreign investment as a means of growth, a way of introducing new technologies and management skills, expanding employment, and increasing productivity. Interference with market forces can cause serious distortions in trade and investment flows, encourage the retaliatory use of similar measures by other governments, and precipitate a downward spiral in global economies.

B. The Three Myths of Foreign Investment in the United States

Mr. Chairman, there is much confusion and altogether too little perspective in the debate raging in the press over foreign direct and portfolio investment in the United States. Three myths play a prominent role in this debate. First, there are those who argue that foreigners are "buying up America." Second, there is concern that our national security is not safeguarded. Finally, there is a fear that the government lacks data on foreign investment in the U.S. Each of these concerns is largely unfounded.

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[1] *See, e.g.*, Statement By The President on International Investment Policy, Sept. 9, 1983.

1. Foreign Investment Constitutes a Small Fraction of Gross National Product

Foreign investment constitutes about 4.5 percent of the gross national product ("GNP").[2] Indeed, foreign investment declined from 1986 to 1987 as a share of GNP. Of course, foreign investment may appear large and growing in nominal terms. But this is in part accounted for by the growth of our economy and inflation, in addition to real growth in investment. Thus, in relative terms—which I think is the appropriate way to analyze this issue—foreign investment has remained small.

2. America's National Security Is Safeguarded

Our government has available to it a number of measures to safeguard America's national security. Like U.S. investors, foreign investors must comply with all applicable laws, such as Securities and Exchange Commission reporting requirements and the antitrust laws. Unlike U.S. investors, a number of special restrictions exist for activities in certain key sectors, such as radio and television broadcasting,[3] coastal and inland shipping,[4] air transportation within the United States,[5] and the production and use of nuclear power.[6] The Defense Department has a comprehensive set of regulations, the Defense Acquisition Regulations,[7] covering the performance of government contracts involving classified information which limit or bar foreign ownership of the contractor. Section 232 of the Trade Expansion Act of 1962,[8] as amended by Section 127 of the Trade Act of 1974 [9] and the Reorganization Plan of 1979,[10] authorizes the President to impose restrictions on imports which threaten to impair national security. The International Emergency Economic Powers Act ("IEEPA") [11] grants the President emergency authority to regulate foreign exchange transactions, transfer of payments between banking institutions where a foreign interest is involved, import or export of currencies or securities, and to control or freeze property transactions where a foreign interest is involved. Export licensing for most commercial goods and technical data are authorized by the Export Administration Act.[12] In addition, since 1975 an interagency group, the Committee on Foreign Investment in the United States ("CFIUS"), has been empowered to review certain foreign investments in this country which, in the judgment of the Committee, might have major implications for United States national interests.[13]

3. The U.S. Government Collects Adequate Data on Foreign Investment

The federal government already collects considerable information on foreign investment in the United States. Indeed, as we heard from the Administration witnesses this morning, and as discussed in Dr. Rosenblatt's statement submitted for the hearing record, the current reporting requirements are adequate. This information is compiled under four separate statutes.

a. *International Investment and Trade in Services Survey Act.*—The International Investment and Trade in Services Survey Act ("Act") [14] requires foreign investors or U.S. affiliates of foreign corporations to report to the Commerce Department within 45 days of any investment in the direct or indirect acquisition of 10 percent or more of a U.S. business, including real estate.[15] Quarterly [16] and annual [17] reports of international business matters are required. A comprehensive "benchmark survey" is currently under way to collect data on foreign company operations in the U.S. for 1987.[18] The Act's legislative history notes that "[i]nformation collected pur-

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[2] *Economic Report of the President 1988*, 248.
[3] See 47 U.S.C. §§ 153, 310(b)(1)–(4) *et seq.* (1982 & Supp. 1987).
[4] See 46 U.SC. §§ 251, 292, 316, 319, 802, 883 et seq. (1982 & Supp. 1987).
[5] 49 U.S.C. §§ 1301 (3), (6), 1372, 1378, 1508(b) (1982 & Supp. 1987).
[6] 42 U.S.C. §§ 2133, 2134 (1982).
[7] 48 C.F.R. 201–253 (1987).
[8] 19 U.S.C. § 1862 (1982).
[9] 19 U.S.C. § 1862–63 (1982).
[10] Reorg. Plan No. 3 of 1979, 44 Fed Reg. 69,173 (1980), reprinted in 19 U.S.C. at 147–54 (1982).
[11] 50 U.S.C. §§ 1701–06 (Supp. 1987).
[12] 50 U.S.C. App. 2401 et seq. (Supp. 1987).
[13] Exec. Order No. 11,858, 40 Fed. Reg. 20,263 (1975), as amended by Exec. Order No. 12,188, 45 Fed. Reg. 989.
[14] 22 U.S.C. § 3101 et seq. (1982 & Supp. 1987).
[15] 15 C.F.R. § 806.15(j) (1987). The initial investment reports are filed on Dep't Commerce/ Bureau of Economic Analysis ("DOC/BEA") forms BE–13, BE–14 and/or BE–607.
[16] 15 C.F.R. § 806.15(h) (1987). The quarterly reports are filed on DOC/BEA forms BE–605 and BE–606B.
[17] 15 C.F.R. § 806.15(i) (1987). The annual reports are filed on DOC/BEA form BE–15.
[18] 15 C.F.R. § 806.15(j) (1987). The "benchmark survey" report is filed on form BE–12.

suant to the [Act] shall not be divulged publicly in any way that might identify the company or individual making such report and such protection is extended to customers of those reporting under the [Act]."[19] The Act's purpose is to supply the aggregated information necessary to assess the impact of foreign investment in the U.S. It is used for statistical, analytical and policy purposes. The aggregated data is made public regularly and is available for public inspection.

b. *Agricultural Foreign Investment Disclsoure Act.*—The Agricultural Foreign Investment Disclosure Act of 1978 [20] requires that foreign investment in U.S. agricultural land be reported to the Secretary of Agriculture within 90 days of the investment if an individual investor holds a 10 percent interest or if separate investors together hold at least a 50 percent interest. This information, which is reported by state and county, is available to the public.[21]

c. *Department of Energy Organization Act.*—Third, the Department of Energy Organization Act ("Energy Act") [22] requires the Department of Energy to report to Congress, to the extent practicable, on foreign ownerships or control of U.S. "energy sources and supplies, including the magnitude of annual foreign direct investment in the" U.S. The Energy Act requires the Administrator of Energy Information to catalog for public use the types of informaiton collected by the Energy Information Administration. However, as the legislative history indicates, Congress did not intend that the Act "require or result in the public disclosure of information protected from such disclosure by law."[23]

d. *Foreign Investment in Real Property Tax Act.*—Finally, the Foreign Investment in Real Property Tax Act of 1980 [24] requires foreign investors owning U.S. real property to file annual information returns with the Internal Revenue Service which, like all tax filings, are confidential.

II. FOREIGN INVESTMENT AS A POLITICAL ISSUE: CONFLUENCE OF THREE POLITICAL ECONOMIC FACTORS

Mr. Chairman, this is not the first time in recent history that foreign investment has been in the forefront of public debate. In the 1970s, the growth of OPEC petrodollars aroused concern and, to a certain degree, hostility. In the end, OPEC investments proved far more modest than anticipated, and foreign investment gradually receded as a political issue. Once again, expressions of concern about foreign investment in the United States are on the rise because of three political/economic factors.

First, the record *federal budget deficits* have been funded by the sale of government securities. During the same period, the U.S. economy has continued to grow.[25] The combined effect, in turn, has been to attract a substantial inflow of foreign capital into the United States. Second, this country's *international trade deficit* increasingly has become a political issue and foreign investment has become inextricably linked in public opinion to the "trade issue." Thus, foreign investment has become politicized as a part of international trade. Third, the much needed *realignment of currencies* has boosted U.S. exports. A necessary consequence of the currency realignment, however, is to increase the buying power of certain foreign currencies relative to the dollar. Thus, U.S. assets, at least for the moment, appear to be a relative bargain.

A. The Federal Budget Deficit Has Been Funded by Borrowing and Attracting Large Inflows of Foreign Investment into the United States

Mr. Chairman, for 64 consecutive months the U.S. economy has expanded, the longest peacetime period of growth in the history of the U.S. economy. In 1987, the economy's real output rose by nearly 3 percent, with 3 million additional jobs created.[26] The inflation rate remained in the 4 percent range, well below the double-digit rates at the outset of this decade.[27]

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[19] 1976 U.S. Code Cong. & Adm. News 4663, 4665.
[20] 7 U.S.C. 3501 *et seq* (Supp. 1987).
[21] The aggregated information is published annually in the report titled *Foreign Ownership of U.S. Agricultural Land.*
[22] 42 U.S.C. § 7267(8) (1982).
[23] 1977 U.S. Code Cong. & Adm. News 854, 880.
[24] 26 U.S.C. § 6039C (Supp. 1987).
[25] *Economic Report of the President, supra* note 2, at 19.
[26] *Id.* at 255, 284.
[27] *Id.* at 318.

During this period, gross private investment has averaged 16 percent of GNP.[28] At the time, the federal government's annual budget deficits have hovered at about 4 percent of GNP, reaching levels in excess of $200 billion a year until the recent decline brought about by the Gramm-Rudman-Hollings initiative.[29]

The budget deficit has been funded by the sale of government securities and, therefore, has competed with private investors for available funds. In a sense, Mr. Chairman, this competition for investment capital has acted like a vacuum, attracting all available capital, both domestic and foreign. Without foreign investment in the United States, interest rates would have risen rather substantially, as the federal government competed with the U.S. private sector for a smaller pool of funds. One well-known economist, Stephen Marris, of the Institute for International Economics, recently estimated that real U.S. interest rates would have to rise by 3 to 5 percentage points in the absence of foreign investment.[30] These higher interest rates would have serious adverse consequences for the American economy. This is one of the principal reasons why the U.S. private sector and the Administration are opposed to the Bryant amendment, or any other measure which would tend to discourage foreign investment in the United States.

B. The U.S. International Trade Deficit has become a Political Issue, and Foreign Investment Has Become Linked, in Public Opinion, to the "Trade Issue"

As the dollar appreciated against major foreign currencies between 1981 and 1985, imports surged into the United States and exports lagged. The current account deficit grew to record proportions and concern mounted over the perception that U.S. jobs were being moved offshore. It was in this setting that international trade became a highly visible political issue. More recently, the news media and public opinion have come to link foreign investment with the "trade issue." However, it is important to bear in mind that long before the U.S. began running a trade deficit, the United States was the most active player in foreign investment. Americans have had a long experience with investing in other countries, and foreign persons and businesses have long been attracted to the safe, dynamic and large American marketplace. It seems to me to be inappropriate to link foreign investment, both inward and outward, as identical to the causes of the trade deficit, or to consider foreign investment as parallel to the trade issue.

C. The Realignment in Currencies Has Boosted U.S. Exports but, as a Necessary Consequence, Has Made U.S. Assets More Attractive

Since the Plaza Agreement in September 1985, the dollar has fallen an average of 50 percent against the currencies of major trading partners, allowing it to reach a new "market" value. The multilateral trade-weighted value of the U.S. dollar for 1987 was still above its value in 1980. *See* Table I. As a result of the currency realignment, the increases in imports into the United States has slowed, exports have rapidly increased, and the trade deficit has narrowed.

IN 1987, merchandise exports increased 11.8 percent,[31] compared with 3.9 percent in 1986.[32] This is all the more impressive because U.S. manufacturing is reaching its capacity utilization rate, underscoring the large volumes involved. The nation's factories, mines, and utilities operated at 82.4 percent in February for the third consecutive month, the highest overall rate since March 1980, and very close to full capacity in real terms.[33] Paper mills are producing at 95.8 percent of total capacity, textile plants are operating at 91.9 percent, while primary metal and chemical manufacturers are operating at 86.5 percent.[34] Iron and steel production increased by nearly 30 percent in the 12 months through November 1987, having fallen about that much during the preceding 3 years.[35] Similarly, the output of construction, mining, and farm equipment rose 18 percent through November, to 1982 levels.[36]

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[28] *Id.* at 248.
[29] *Id.* at 248, 280.
[30] S. Marris, *Deficits and the Dollar 44, 140–41 (rev. ed. Aug. 1987).*
[31] Dep't Commerce, *Summary of U.S. International Transactions: Fourth Quarter 1987* (Mar. 15, 1988).
[32] Dep't Commerce, *Survey of Current Business 55* (June 1987).
[33] Federal Reserve, *Capacity Utilization Manufacturing, Mining, Utilities, and Industrial Materials* 1 (Mar. 17, 1988).
[34] *Id.*
[35] *Economic Report of the President, supra* note 2, at 29.
[36] Id.

Shipments of lumber and wood products last year increased 31 percent, to almost $4 billion.[37] Apparel exports rose 26 percent, to $1.5 billion.[38] Even the U.S. auto industry, which has not been shy about making known its views on trade issues, has seen a rise in exports. Chrysler expects to export some $800 million in vehicles this year, up from $200 million just three years ago.[39] GM hopes to export 4,000 cars to Japan in 1988, up from 2,875 in 1987.[40] It is perhaps noteworthy that Honda North America has begun exporting a projected 4,000 cars to Japan in 1988, as well as its top-of-the-line GL 1500 Gold Wing touring motorcycle.[41]

Mr. Chairman, American industry is in the midst of a strong recovery, driven largely by exports. However, the necessary consequences of the realignment of currencies has been to make U.S. assets, purchased in dollars, more attractive to foreign investors. Foreign investors recognize that American industry is becoming an increasingly competitive force in the international marketplace. America is now one of the most dynamic and attractive markets in the world. The relatively low prices of U.S. assets in appreciated foreign currencies might at first make them look as if they were at "bargain prices." The dollar, however, has merely settled to its 1980–1981 level relative to these currencies. Foreign acquisitions manifest nothing more than the normal forces of the marketplace at work. Moreover, through 1986, foreign acquisitions of U.S. firms as a share of all acquisition activity remained well below levels attained in the early years of this decade. *See* Table II.

The U.S., moreover, is a net beneficiary of foreign direct investment. Generally speaking, in the same way U.S. shareholders receive premium prices as a result of domestic acquisitions, they receive premium prices from foreign purchasers. These funds, in turn, are reinvested in the U.S. economy, including the expansion of America's industrial base. This enhances America's ability to exploit its comparative advantage (including the relatively lower value of the U.S. dollar) and make significant gains in international market share. In addition, foreign-owned manufacturing affiliates in the U.S. exported at a significantly greater rate than U.S.-owned manufacturers. *See* Table III. Further, and perhaps contrary to the general perception, imports by U.S. manufacturing affiliates of foreign firms rose less rapidly than did overall U.S. imports of manufactures. *See* Table IV.

One final aspect of the currency realignment, which has gone largely unnoticed, is that the tide of U.S. companies moving production offshore may have turned. Indeed, Mr. Chairman, there is a discernible trend among U.S. companies to close down foreign manufacturing facilities and bring them back to the United States. To the extent that certain individuals and groups lamented the transfer of jobs and manufacturing capacity overseas, today they should rejoice in the return.

III. SUMMARY OF THE "BRYANT AMENDMENT"

Section 703 of the House-passed version of H.R. 3, the omnibus international trade bill, would adversely affect the free flow of capital to the detriment of this country's economic and political interests. The major provisions of the Bryant amendment would:

Require detailed registration, within 30 days, with the Commerce Department by a foreign person acquiring, directly or indirectly, a "significant interest" in a U.S. property or a "controlling interest" in a U.S. business enterprise;

Require detailed registration with the Commerce Department by a foreign person acquiring, directly or indirectly, a "major portfolio interest" in a U.S. business enterprise;

Require onerous public disclosure of confidential business information by the foreign person within 180 days of acquiring a "controlling interest" in a U.S. business enterprise;

Require retroactive registration of existing investments in U.S. property, business enterprises or securities;

Impose severe civil penalties for failure to register or file subsequent reports;

Impose harsh criminal penalties for willful failure to register or file subsequent reports;

Require monitoring of compliance with the Act;

Require annual reports to Congress; and

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[37] "Big Wheels Turning: The dollar's decline helps American manufacturers shift back into high gear," *Time* Mar. 14, 1988, at 48, col. 2.

[38] *Id.*

[39] *Id.* at col. 7.

[40] *Id.*

[41] Rodger, "The Market Opens At Last," *Financial Times*, Mar. 21, 1988, at 20.

Make an inventory of registered investments available for public inspection.

In terms of the Bryant amendment, the issue is whether this country will continue to embrace a policy of breaking down barriers to the free flow of capital, or whether we will abandon that policy and begin to erect our own barriers.

IV. THE BRYANT AMENDMENT IS DISCRIMINATORY, BURDENSOME, AND BAD PUBLIC POLICY

At the moment, Mr. Chairman, there appear to be two diametrically opposed views on how to conduct this country's international trade and investment relations. On the one hand, there are those who believe that we need to protect our markets from foreign competition either because that competition is preceived to be "unfair" or out of a recognition that they are unable to compete in certain sectors and, therefore, we need to protect U.S. industries. Proponents of protectionism point to the vastness of America's resources and advocate a "go it alone" policy. Under this view, the solution to international trade and investments is to erect barriers.

On the other hand, there are those (and I include myself in this group) who believe that the American economy is strengthened by breaking down barriers to international trade and the free flow of capital.

A. The Bryant Amendment Is Discriminatory

1. It Would Violate the "National Treatment" Standard in Our International Commitments

A public registration requirement for foreign investors, as proposed in Section 703, which is not likewise imposed on domestic investors, is discriminatory *per se*. It is contrary to the U.S.'s long-standing policy to treat all investors in the United States[42] on an equal footing. A public registration requirement would be contrary to our international obligations, including the obligation to accord "national treatment" to foreign investors under numerous bilateral Friendship, Commerce and Navigation ("FCN") treaties. It also would be in conflict with a key provision of our bilateral investment treaties ("BITs"), of which 10 have been signed. For example, the Treaty of Friendship, Commerce and Navigation Between the United States of America and the Federal Republic of Germany[43] requires in Article VII, paragraph 1, that "Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment with respect to engaging in all types of commercial, industrial, financial and other activity for gain . . ." To the extent, moreover, that the Bryant amendment would compel a registrant to reveal trade secret information, it would be in violation of Article X, paragraph 1, of the U.S./FRG FCN treaty. It is also possible that the Bryant amendment would violate Article XI, paragraph 1, which prohibits either country from imposing upon the other's business enterprises "taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object . . . more burdensome than those borne in like situations by nationals and companies of such other party."

The public registration requirement would be subject to formal complaints in the Organization of Economic Cooperation and Development ("OECD") as contrary to the U.S. obligations to liberalize our markets under the Code of Liberalisation of Capital Movements.[44] The Bryant amendment would cause the U.S. to derogate from Article I, paragraph b, which provides that "Members shall, in particular, endeavour (i) to treat all non-resident-owned assets in the same way irrespective of the date of their formation."

A further consequence of a discriminatory reporting requirement is that it would almost certainly undermine U.S. efforts to achieve a more open international financial system. After all, the U.S. has been in the forefront of efforts in the OECD and International Monetary Fund ("IMF") to remove barriers to the free flow of capital.

Moreover, Mr. Chairman, should the United States-Canada Free Trade Arrangement enter into force, the Bryant amendment would immediately conflict with its national treatment provision. I recognize that there are some concerns already over the standstill provision. In the context of the Bryant amendment, however, this would appear to be an unfortunate and entirely unnecessary source of irritation between two great friends and the world's two largest trading partners.

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[42] With minor exceptions. *See* supra I.B.2.

[43] *Entered into force* July 14, 1956. 7 UST 1839; TIAS 3593; 273 UNTS 3.

[44] *Code of Liberalisation of Capital Movements* (OECD Oct. 1986).

2. It Would Require Non-U.S. Investors to Reveal Confidential Business Information

Another discriminatory aspect of Section 703 is that it would compel many foreign investors to make public confidential information which their U.S. competitors are not required to reveal. *See* Section 703(d)(2). Section 703 would require disclosure by the foreign entity of:

a. "The size of the interest acquired in the United States property and the price paid for the interest"; Sec. 703(c)(5)

b. Detailed operating and financial information on the acquired enterprise, as verified by outside audit; Sec. 703(d)(2)(A)

c. The identity, nationality, compensation and related business interests of executive officers and directors; Sec. 703(d)(2)(C)

d. "[A]n English translation of any public financial disclosures filed in the home country" of the foreign company; Sec. 703(d)(1) and

e. "Such other information as the secretary [of Commerce] may require by regulation." Section 703(c)(6).

This information would not be required of U.S. companies, but only of foreign companies.

Publicly-traded foreign firms may not satisfy the onerous report requirements of Section 703(d)(2)(A) by simply filing their SEC reports with the Commerce Department. The SEC's 10K form allows registered businesses to file consolidated returns for all its U.S. subsidiaries. The Bryant amendment would force the filing of separate returns for each subsidiary, substantially increasing paperwork. Moreover, this mandated public disclosure would be plant-specific and would place the non-U.S. firm at a significant disadvantage.

The effect of these requirements is obvious—the Bryant amendment would place foreign investors at a comparative disadvantage solely because of their nationality and would thereby discourage investment in U.S. assets. Foreign investors would divert their resources to other countries.

B. The Bryant Amendment Is Burdensome

1. It Would Be Burdensome to the Investor

The Bryant amendment would make it more burdensome and expensive for foreign persons to invest in the United States. With respect to portfolio investors, the requirement for the public disclosure of the names and other information, including ultimate beneficial owners, is enormously onerous, if not impossible to administer, since many beneficial owners are not readily determinable. For example, if a large publicly-owned foreign bank bought $250,000 of U.S. securities for its own account, it would be required to trace all of the shareholders of its stock, in whatever form it is held, by individuals or other institutions. If it bought securities for a non-U.S. customer, it would be required to breach customer confidentiality.

Moreover, as previously noted, the registered investor would have to provide "an English translation of any public financial disclosures filed in the home country" and would be subject to reporting in the future "such other information as the Secretary [of Commerce] may require by regulation in furtherance of this Act."

Although it is impossible to quantify with any degree of precision, a certain percentage of foreign investors would be disinclined to submit to a regime of reporting that itself is difficult to comply with and carries harsh penalties.

2. It Would Impose Additional Costs on the Government to Monitor and Enforce Compliance

A substantial bureaucracy would have to be set up to monitor, analyze and, where appropriate, enforce the reporting requirements the Bryant amendment would impose. At a time of record federal budget deficits, one must carefully weigh the advantages to the American people versus the dedication of scarce resources to a somewhat redundant and largely irrelevant data collection system.

C. The Bryant Amendment Is Vague and Ambiguous

Section 703 requires that the "ultimate beneficial owner" must register but does not define that term. If a publicly-owned foreign company acquires a controlling interest in a U.S. asset, must the foreign company register or must its shareholders?

The Bryant amendment also provides that two or more persons acting as a "group" for the purpose of investing in the United States would be considered a foreign investor if the group is at least 25 percent foreign-owned. As applied to pension or investment funds, this could mean that a holder in the fund, no matter how small that interest, might be required to register.

D. The Bryant Amendment Is Bad Public Policy

Mr. Chairman, foreign investment in the United States is good for the American economy. Foreign investment generates jobs, produces new factories, enhances our technological base, improves our management capabilities, and increases our standard of living. A reconsideration of U.S. public policy with respect to foreign investment should focus on the following facts:

1. Like domestic investment, foreign investment promotes real growth and increases the competitiveness of U.S. industry. It adds to the industrial capacity of the economy by expanding the nation's stock of new plant and equipment. This is especially important at this time since, in many sectors, we appear to be reaching our manufacturing capacity.[45]

2. At least until the budget deficit is eliminated, foreign investment will continue to exert downward pressure on U.S. interest rates. Lower interest rates benefit the U.S. economy, encouraging domestic business expansion and the creation of new jobs.

3. Foreign investment currently employs about 3 million Americans.

4. Foreign investment tends to better distribute employment in the U.S. This is most marked in the manufacturing sector, where employment by U.S. affiliates of foreign firms rose 44 percent between 1980 and 1986, at a time when employment overall in U.S. manufacturing declined 6.4 percent.[46] This indicates that many blue collar * * *

5. Along with foreign investment comes new technologies and management techniques, which strengthen workers who would have become unemployed but for foreign investment. America's industrial base. Interestingly, research and development ("R&D") spending by U.S. affiliates of foreign firms has increased at a faster rate than has all U.S. industry R&D spending.[47]

6. Foreign investment stimulates competition, which directly benefits the U.S. consumer through lower prices and a wider selection of goods. In order to compete, industries must cut costs, improve products, and satisfy the consumer.

The Bryant amendment would set U.S. public policy on a course harmful to our long-term interest. By discouraging foreign investment, the Bryant amendment would:

1. Lead to higher U.S. interest rates, fostered in large part by the federal government's need to attract capital to fund the budget deficit. As a result, interest rates would rise across the board, including home mortgages. This would reduce residential construction as well as domestic investment in plant and equipment. Small and weaker domestic borrowers would be crowded out of financial markets. This inevitably would trigger a slowdown in the economy and an increase in unemployment.

2. Diminish the U.S.' ability to compete. Similarly, foreign investment that might have come to the U.S. could flow to other countries and enhance their productivity and export capabilities. In turn, those products would more effectively compete against our exports. This is particularly ill-timed since the U.S. has only recently begun to make the transition from a consumer-driven to an export-driven economy, propelled by the realignment of currencies. This competitive advantage would be squandered.

3. Encourage other countries to erect barriers to the free flow of capital, which would directly harm the U.S. services sector—one of the dominant industries in this country—as well as U.S. overseas manufacturing operations.

4. Undermine U.S. efforts in the new round of GATT negotiations, aimed at multilateral agreement to reduce government interference with the free flow of capital and, in particualr, to discipline the imposition of so-called performance requirements (such as to export or substitute local content for imports) on foreign investors.

5. Frustrate U.S. efforts to negotiate in the OECD framework for the reduction or elimination of remaining limitations on inward investment. The Code of Liberalization of Capital Movements has already achieved significant liberalization. The Code calls for national treatment of investors.

6. Diminish the role of New York as the world's financial capital. This would cost American jobs and lessen the U.S.' influence in capital markets.

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[45] *See infra* II.C.

[46] *Economic Report of the President, supra* note 2, at 296; Dep't Commerce, *Foreign Direct Investment in the United States, Preliminary 1985 Estimate* Table F-1; and Herr, "U.S. Business Enterprises Acquired or Established by Foreign Direct Investors in 1986," Survey of Current Bus., May 1987, at 34.

[47] Dep't Commerce, *Foreign Direct Investment in the United States* (various issues, 1980–1985); Census Bureau, *Statistical Abstract of the United States 1987* 564 (1988).

A major advantage the United States has enjoyed in attracting foreign investment is its unswerving commitment to an open investment policy. Despite the large amount of foreign investment in the United States (in absolute terms), foreigners own a relatively small percentage of total U.S. assets in this country. In 1985, the last year for which data is available, foreign direct investment represented 1.6 percent of all U.S. corporate assets. *See* Table V. Moreover, this foreign investment is widespread.

V. CONCLUSION

Mr. Chairman, the Bryant amendment could seriously affect foreign investment in the United States at a time when our economy remains highly dependent on maintaining the inflow of savings from abroad to finance the federal budget deficit and to sustain the overall rate of investment in the U.S. economy at reasonable interest rates.

While it is impossible to quantify the number of foreign investors or dollar volumes of foreign investment which would be diverted from the United States were the Bryant amendment enacted, we can determine the types of investments which would tend to be most seriously affected. They are the U.S. assets which represent marginally profitable investments. Industries where the foreign investor can add something that a U.S. investor has not or cannot, which perhaps would tilt the scales from a money-losing to a money-making investment, would be most seriously affected. In other words, Mr. Chairman, precisely those U.S. industries that can benefit most from foreign investment would be the first and most seriously affected.

Rather than turning inward, as the Bryant amendment would have us do, the U.S. should intensify its efforts to get its own budget deficit under control. Reducing the federal budget deficit will reduce demand for investment capital, permitting the financing of private investment expenditures out of available pools of capital—both private and foreign. This could be accomplished without driving up interest rates and, indeed, could result in a lowering of these rates as inflationary expectations receded. In turn, the added investments in plant and equipment would help reinvigorate the economy's industrial base, allowing U.S. exports to compete more effectively. We should simultaneously continue to urge our major industrial trading partners to accelerate their own domestic demand and, to the extent any maintain barriers to the free flow of capital, to reduce them. The combined effect of these two actions will facilitate the needed reductions in the U.S. current account deficit as well as reductions in the surpluses of our major trading partners. During this period of adjustment, the U.S. should continue to keep its borders open to capital flows. These will be needed to ease the required adjustments.

TABLE I.—MULTILATERAL TRADE-WEIGHTED VALUE OF THE U.S. DOLLAR, 1980–87

Year	Nominal	Real [1]
1980	87.4	84.8
1981	102.9	100.8
1982	116.6	111.7
1983	125.3	117.3
1984	138.3	128.5
1985	143.2	132.0
1986	112.2	103.3
1987	96.9	90.6

[1] Adjusted by changes in consumer prices.

Source: Economic Report of the President 1988.

Note.—March 1973 = 100.

TABLE II.—MERGER AND ACQUISITION ACTIVITIES, U.S. AND FOREIGN FIRMS VALUE OF TRANSACTIONS, 1980–86

[In billions of dollars]

	Total activity	U.S. firms acquire U.S. firms	Foreign firms acquire U.S. firms	Foreign firms share of total activity
1980	54.7	27.0	7.7	22.2
1981	72.4	56.1	16.3	22.5
1982	65.1	59.6	5.5	8.5
1983	50.6	48.4	2.2	4.4
1985	122.0	114.0	8.0	6.6
1985	143.1	124.3	18.8	13.1
1986	188.5	165.2	23.3	12.4

Source: W.T. Grimm, Mergers and Acquisitions.

TABLE III.—EXPORTS OF MANUFACTURED GOODS BY U.S. AFFILIATES OF FOREIGN FIRMS AND OVERALL U.S. EXPORTS OF MANUFACTURED GOODS: 1980–85

	U.S affiliates [1]	Total U.S. exports
1980	100.0	100.0
1981	150.2	107.1
1982	142.4	97.1
1983	133.2	92.1
1984	144.6	101.7
1985	142.4	104.0

[1] Manufacturing firms (1980 = 100).

Source: U.S. Department of Commerce, Foreign Direct Investment in the United States, various issues, 1980–1985 and U.S. Trade Performance in 1985 and Outlook.

TABLE IV.—IMPORTS OF MANUFACTURED GOODS BY U.S. AFFILIATES OF FOREIGN FIRMS AND OVERALL U.S. IMPORTS OF MANUFACTURED GOODS: 1980–85

	U.S affiliates [1]	Total U.S. exports
1980	100.0	100.0
1981	124.9	112.7
1982	117.0	113.9
1983	132.4	128.6
1984	171.6	174.2
1985	174.3	194.1

[1] Manufacturing firms (1980 = 100).

Source: Dep't Commerce, Foreign Direct Investment in the United States, (various issues, 1980–1985) and U.S. Trade Performance in 1985 and Outlook.

TABLE V.—FOREIGN DIRECT INVESTMENT REPRESENTS A SMALL SHARE OF ALL U.S. CORPORATE ASSETS

Year:	Share of U.S. assets
1950	0.6
1960	.6
1974	.7
1980	1.2
1982	1.5
1985	1.6

Source: Robert E. Lipsey, Changing Patters of International Investment In and By the United States, Working Paper Series (National Bureau of Economic Research May 1987) 46.

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

QUESTION 1. Should our government have some idea as to the record of foreign investors in the areas of environmental compliance, workplace conditions, sex and wage discrimination, Arab boycott, foreign corrupt practices, etc?

Mr. RICHARDSON. Yes. The federal government has a duty to monitor compliance with U.S. laws by all companies operating within the jurisdiction of the United States, whether in terms of job safety, protection of the environment, discrimination, antitrust, or any number of other areas. If such monitoring is adequate for U.S.-owned companies, it is likely to be equally so for foreign-owned companies. I am not aware of any reason to believe that U.S. businesses with some degree of foreign ownership are any better or worse at adhering to the law than their counterparts with solely U.S. ownership. Absent any objective indication that foreign investors as a group are less law abiding than U.S. investors, it would not be appropriate to single them out.

QUESTION 2. Are your member companies aware of the restrictions their own governments place on U.S. foreign investment? Are they aware of their own country's rationale for those restrictions?

Mr. RICHARDSON. Yes. Both AFIA and its members are aware of the rationale for restrictions on foreign direct investment in other countries. Whether or not we agree with them is, of course, a different matter. The rationales for existing restrictions vary. Perhaps the only common restriction is related to national security. After this, there is little consensus among the developed countries on their policies on foreign direct investment.

As you know, Mr. Chairman, in the spectrum of host country rules and regulations governing foreign investment the U.S. is somewhat in the middle range relative to its major trading partners. U.S. law is less restrictive than that of Japan and Germany; but it is more restrictive than the United Kingdom, Italy, Switzerland, and others.

Foreign investors tend, by and large, to be multinational corporations. And, in my experience, multionational corporations tend to believe that the ability to move capital freely is in their best interest. This is true regardless of which nationality, if any, has a controlling interest in a given multinational enterprise. In this respect, AFIA and its members, together with most multinationals, I presume, support the traditional U.S. policy of breaking down barriers to the free flow of capital.

QUESTION 3. Are you concerned about foreigners buying U.S. companies to acquire our technological resources? What would happen if the U.S. loses many of our technological advantages due to foreign transfers? Does this seem wasteful when so many of our federal dollars go to research and development in both public and private sectors—that a foreign investor can buy technologies developed with American taxpayers' dollars?

Mr. RICHARDSON. Mr. Chairman, this is an extremely important and multifaceted question. I would like to answer it by touching on a few points. First, it is unclear that foreign investors are buying U.S. companies to acquire American technology. Undoubtedly, some of that goes on. But the principal reason to buy a U.S. company is to make a profit. On balance, I think we come out ahead as a country because we receive advanced technology, new techniques, and additional jobs. Second, the bulk of foreign direct investment has been in the manufacturing sector and has tended to slow the decline in the loss of employment we have witnessed in manufacturing nationwide since 1980. There is no need to go into this in detail since it is more fully elaborated on in my written statement. Third, I think it is an open question whether and, if so, what the appropriate private use of technology developed at the public's expense should be. I don't think the question is one of foreign equity interest in a U.S. enterprise versus wholly American equity interest but who should benefit—the public or the private sector—and in what proportion, from technology developed at the public's expense.

Dr. ROSENBLATT. U.S. and foreign firms that are involved in acquisition, merger, or takeover activity in their home countries or elsewhere in the world are principally pursuing policies to strengthen their competitive positions in the global marketplace. To accomplish this, the acquiring companies must introduce additional resources that will improve the ability of the acquired company to deal with its competitors. These additional resources will include, in many instances, new plant and equipment that will embody the latest technologies, and engineering designs, infusions of new managerial approaches and techniques to eliminate waste and reduce costs, access to increased financial capital at reasonable interest rates, and the sharing of patents, licenses and technologies between the parent and the acquired company. This is a two-way street, with the foreign firm putting in as much or more in

the way of new technological information, methods, and processes as it may withdraw.

I would like to submit for the record a table which is based on the information that the Bureau of Economic Analysis of the Commerce Department now collects in its quarterly and annual balance of payments surveys, showing that U.S. affiliates of foreign firms have received more in the way of access to the technologies controlled by their parents than they have transferred to their parents.The data recorded are payments or receipts of U.S. affiliates for royalties and license fees. The data cover the period 1983 through the first three quarters of 1987.

TABLE I.—ROYALTIES AND LICENSE FEES

[In millions of dollars]

	1983	1984	1985	1986	1987 [1]
U.S. affiliates payments	465	665	570	741	670
U.S. affiliates receipts	60	68	103	125	117

[1] January–September.

Source: Department of Commerce, "Survey of Current Business," December 1987 and June 1986.

These data clearly do not support any claim that foreigners are acquiring U.S. companies simply to gain access to the existing technological base of these U.S. companies. The foreign parents are providing more access to their own technologies and processes to their U.S. affiliates than the reverse. There has been a net payment of between $500 million to $600 million per year to the foreign parent by the U.S. affiliate for this greater access.

QUESTION. 4. Do you think that it would be sound economic and public policy to have reciprocal treatment of foreign investment? Since many many foreign governments impose investment barriers by refusing to permit foreign investment on the same basis as domestic investment, don't you think reciprocity should apply to foreign acquisitions of U.S. companies?

Mr. RICHARDSON. The traditional U.S. international investment policy has been to encourage other countries to eliminate barriers to the free flow of capital, not to erect our own barriers in response. By and large, I think this policy has met with success. On the multilateral level, we have in place the OECD's *Code of Liberalisation of Capital Movements.* There is an effort underway, led by the United States, to broaden this policy in the new round of multilateral trade negotiations in the context of the GATT. Adoption of the "Bryant Amendment" or the erection of U.S. barriers would send the wrong signal at the wrong time, to the detriment of U.S. business interests.

On the bilateral level, one example of reducing barriers is with our largest trading partner, Canada. With the hoped-for acceptance of the U.S.-Canada Free Trade Arrangement, capital barriers will be reduced. While some barriers will remain, it nevertheless represents a constructive step forward.

Do we have any other policy options? I think not, Mr. Chairman. We know that the reciprocal erection of barriers is likely to injure the economy of the host country, as well as the global economy. There is no better example than the Smoot-Hawley tariff act, which taught us a very painful lesson. Indeed, the genesis of our present policy to work for the elimination of barriers to trade in goods and services is rooted in the lesson of protectionism.

No, Mr. Chairman, I think the only correct policy is the one generally being pursued by the United States. We still have a way to go. But the effort is worthwhile and there is, at least at this time, no reason to believe that we can't achieve our goal in the new GATT negotiations.

QUESTION 5. What about a foreign company that is protected in its home market, and then uses its profits to buy a U.S. competitor? Is this unfair?

Mr. RICHARDSON. The first principle we should strive for, Mr. Chairman, is national treatment. This is the principal theme of my testimony today, that there should be no discrimination on the basis that a company is not a national of the host country.

That said, I don't believe there exists, as a general matter, any major trading partner with an investment policy which unfairly protects its nationals to allow them to accumulate capital to buy U.S. competitors. If there were, we would be against it.

QUESTION 6. Our R&D is supposed to give us a competitive (comparative) advantage-how can this be a factor when it disappears as soon as our companies are bought?

Mr. RICHARDSON. To begin with, when a foreign person invests in or acquires a U.S. business, the technology involved in the U.S. business does not evaporate. The acquired company remains in the United States. The jobs remain in the United States. Indeed, to all outward appearances, nothing has changed.

It is, of course, possible that U.S. business will transfer technology abroad—just as British, Canadian, French, German, and Japanese companies have transferred technology to the United States. This technology transfer is done on a business basis, in the context of the free market.

I can envision extreme circumstances where U.S. technology might be sought. However, as the Committee is well aware, we have in place existing law to protect our technological base. For instance, a number of special restrictions exist for activities in certain key sectors, such as coastal and inland shipping, air transportation within the United States, and the production and use of nuclear power. The Defense Department has a comprehensive set of regulations, the Defense Acquisition Regulations, covering the performance of governmental contracts involving classified information which limit or bar foreign ownership of the contractor. Perhaps more to the point, the Export Administration Act authorizes licensing for most commercial goods and technical data, as well as restrictions on shipments of critical technologies and products. While it is true that a U.S. affiliate of a foreign firm may violate the export laws, we are unaware of any evidence indicating that those firms tend to do so at a higher rate than wholly U.S.-owned firms. In fact, the nationality of the investors appears to be irrelevant.

In conclusion, Mr. Chairman, I would add that we would be pleased to work with this Committee to address any gaps in the law which may be found to exist.

QUESTION 7. We are now a net debtor nation—is this debt being used productively or is it being used to finance consumption?

Mr. RICHARDSON. Both, although it is not entirely clear to me in what proportion. One thing is clear, though, and that is the overriding need to balance the federal budget and to reduce the federal debt. Until this is done, the federal government will continue to compete with the private sector for limited investment dollars. This is to the overall detriment of our national well-being.

QUESTION 8. Those who oppose a foreign investment registration provision argue that additional reporting will restrict the flow of investment into this country. The underlying assumption is that a reporting requirement has a "chilling effect" on investment. Can you please provide concrete examples of this phenomenon?

Mr. RICHARDSON. As to the "chilling effect," Mr. Chairman, I cannot give you a concrete example. The reason is that no existing law—neither ours nor that of any other major trading partner—publishes confidential business information by company. The Bryant amendment would thus be a unique provision.

I believe, Mr. Chairman, that those who oppose the Bryant amendment, and I count myself in, rest their arguments upon at least three factors. First, it is discriminatory. It seems to us just plain wrong to treat companies differently simply because they have foreign owners. Second, it is burdensome. A great deal of useless and hard-to-compile information is required. Finally, and perhaps most important, it requires the public disclosure by company of confidential business information. This requirement is not only unfair and anticompetitive, but serves no public policy purpose.

I don't believe there is anything inherently wrong with reporting foreign direct investment in the United States. In fact, there currently exists a number of reporting requirements, which are discussed in some detail in my written statement. Again let me offer, Mr. Chairman, to work with this Committee to determine whether or not the existing reporting requirements are in fact adequate to provide data to formulate public policy.

QUESTION 9. Many people advance the argument that restrictions on foreign investment injure the restricting country. Japan maintains restrictions on investment within its borders. How has Japan suffered as a result of these restrictive practices?

Mr. RICHARDSON. As a matter of economics, Mr. Chairman, there can be no doubt that restrictions on foreign investment injure the host country. One well known example is India, whose economic development has suffered tremendously because of its restrictions on investment.

With respect to your question about Japan, it is, of course, relevant that it has a high savings rate and a large favorable balance of trade and so has no current need to import large amounts of capital. Mergers and acquisitions have not yet gained a major foothold in Japanese business practice. Moreover, while Japan maintains on

its books laws to enable it to restrict foreign investment, in practice it has been fairly liberal. In fact, a study prepared by Booz, Allen & Hamilton, Inc. for the American Chamber of Commerce in Japan and the Council of the European Business Community, *Direct Foreign Investment in Japan: The Challenge for Foreign Firms,* concluded "that legal and regulatory restrictions are no longer the major barrier to direct foreign investment in Japan."

QUESTION 10. According to OECD data in its publication entitled *Recent Trends in International Direct Investment,* foreign direct investment in Japan increased 284% betweeen 1980 and 1983. In 1980, FDI in Japan was U.S. $300 million. In 1983, FDI was $1.153 billion. Can you explain this increase in light of Japan's restrictive attitude toward foreign investment?

Mr. RICHARDSON. There are two aspects to this question. First, as I mentioned, although Japan does have laws on the books to restrict foreign investment, it does not have a track record of using them. I am, therefore, not at all surprised by your figures.

The second aspect is that the surge in foreign investment in Japan probably had more to do with the yen-dollar relationship than anything else. The same may be said for today, with the surge of foreign investment in the United States.

QUESTIONS OF SENATOR EXON, AND THE ANSWERS

Mr. RICHARDSON. While I am not an expert on investment banking, it seems to me that the role of investment bankers is to provide investment advice for their clients and to help their clients arrange financing for the transactions they undertake. This is true whether the client is of U.S., foreign, or mixed ownership.

In performing this role, investment bankers conduct careful legal review of potential financial transactions to ensure that they comply with all applicable laws and regulations.

You have referred, Senator, to a pending offer by Beazer PLC, a British-owned company, to acquire the Koppers Company, a U.S. corporation. Based on the descriptions of this transaction on the public record, I see no evidence that it violates any U.S. laws or policies. Further, the actions of the firms advising both companies, Shearson Lehman Hutton and County NatWest for Beazer, and First Boston and Dillon Read for Koppers, appear to be within the normal activities of investment banks. In that case, the issues thus presented are for the shareholders, not the government, to resolve.

You also ask whether investment bankers are in the business of identifying "vulnerable companies and go out and seek hostile buyers." You go on to state that "[t]hey [investment bankers] are increasingly turning to foreigners to launch their attacks."

I am not aware of evidence indicating that this is a common practice. In the ordinary course, corporations hire investment bankers to help them meet business objectives, not the other way around. Increased foreign investment in the United States is a consequence of our nation's economic position, not investment banking practices. The best thing we could do to change the environment in which foreign companies perceive bargains in U.S. companies would be to strengthen our international economic standing by closing America's twin budgetary and trade deficits. As a nation, we should address the overall issue of ensuring long-term international competitiveness, rather than being sidetracked by the symptoms of the current disease caused by these deficits.

The CHAIRMAN. Thank you very much.
Governor Solomon.

STATEMENT OF ANTHONY M. SOLOMON, CHAIRMAN, S.G. WARBURG (U.S.A.), INC.

Mr. SOLOMON. Thank you, Mr. Chairman.

I do not want to repeat the arguments against the Bryant amendment that you heard this morning. I share that view. I feel that the amendment would be damaging.

Just let me make the point that I served in the Kennedy, Johnson, and Carter Administrations on policy positions involving this particular set of issues, and I think it is fair to point out it is not simply the Reagan Administration.

But there is a very strong tradition in the Democratic administrations that we want to respect the confidentiality concerns, that we feel that the national interest of the United States would be severely damaged if we were to breach that precedent, and I doubt that there is any information other than the confidential information in the Bryant amendment that is not already being gathered by the responsible officials for aggregate purposes in the areas where they are taken in now.

I think that I am here to answer any question you may have, sir. But I believe that my arguments would simply repeat what you have already heard.

I guess I should say that I do not really feel that this discussion is so much about the reporting consideration. It is really, I think, the beginning of a major long term debate in this country about foreign takeovers. And I think Professor Tolchin was quite honest in her testimony, in which she devoted 90 percent of her testimony to that issue, the policy issue, not to the question of the reporting.

And that is an important issue and will gather increasing importance as the years go by before we can bring our external deficit under control.

But I am here, sir, to answer any questions that you might have.

[The statement and questions and answers follow:]

STATEMENT OF ANTHONY M. SOLOMON, CHAIRMAN, S.G. WARBURG (U.S.A.), INC.

Mr. Chairman, I am Anthony M. Solomon, presently chairman of S.G. Warburg (USA), and formerly Undersecretary of the Treasury for Monetary Affairs and President of the Federal Reserve Bank of New York. The issue before the Committee today is an important one, as the conprehensive statements by representatives of our government and by other experts clearly indicate. I would like to supplement those testimonies by making a few points about the larger issues which are directly and indirectly involved.

Throughout the post-war period, the United States has unquestionably taken the main leadership role in fostering an open, liberal environment for international trade and investment. That global economic and financial system has been the key ingredient in helping to foster four decades of relative prosperity. And it has contributed mightily to keeping the peace and avoiding the kings of tensions among nations that led to tragedy and destruction during the preceding decades.

Other major industrial countries tend to share these principles and recognize how all have benefitted from the maintenance of a free and open environment. But they are in many respects less committed to them than the United States. For those of us with experience in the actual, detailed negotiations involved in the areas of international trade and investment, we can cite numerous examples of how political figures in other countries would be all too eager to scuttle the current system for one based on tighter management of markets. It is the largely bipartisan commitment of the United States sustained through seven presidents that has kept others from wavering—and, in fact, has been instrumental over the years in encouraging others to liberalize their markets.

Thus, it is a grave matter whenever the United States does something, or even seems to do something, that leaves the impression that we are turning inward.

The Bryant Amendment is such an example. It appears to be deviating from the core value of affording national treatment to foreigners. And it can be easily construed by foreign investors as being parently discriminatory in its effects.

The sentiments which underly the framing of the amendment are understandable. There is frustration over the fact that the U.S. trade deficit remains very large and that as long as it remains large there has to be an offsetting inflow of foreign capital to finance it. This dependence on foreign investment has left a residue of uneasiness, even among those who are well aware that it has been the failure of our basic economic policies, and those of our trading partners—and not some unseemly or illicit behavior by foreign businesses and investors—that has been responsible for the emergence of that trade deficit and the accompanying dependence on capital inflows from abroad.

For a while, those sentiments were submerged as foreign investors were content to acquire mainly U.S. government securities. Few people in this country were bothered by that kind of investment.

But it was inevitable that there would be a gradual process of diversification into other U.S. assets as the proportion of U.S. government securities in foreign portfolios got to be too large. That diversification naturally takes many forms, including investments in real estate, in the stock market, and in entire companies.

These investments strengthen our economy in any number of important ways—they create jobs, introduce better technology and sharper management practices, and generate higher tax revenues at the state, local, and federal level. All this helps make the U.S. enconomy more competitive internationally, which will over a period of time lead to a decline in the trade deficit. And the added taxes help to strengthen local economies while reducing somewhat the huge federal budgetary deficit.

To be sure, there are serious, and legitimate concerns about foreign investments which are not intended to produce jobs and profits but which may have political motivations. Such national security concerns deserve to be carefully weighed. As a result, the United States has prudently built up a number of legal safeguards which provide adequate protection against investments in certain sensitive areas which may compromise our national security. Those mechanisms are broadly accepted as warranted by both foreign govenments and companies and they work tolerably well.

But those are exceptional cases, treated through exceptional mechanisms. Most investments benefit both sides. Most investments seek profits, not political influence. And all of these investments help to avoid onerous increases in domestic U.S. interest rates, that would be necessary if this country had to suddenly do without large-scale voluntary foreign investment.

It cannot be stated too strongly that this country and our economy would be the biggest losers if we lost the confidence of foreign investors. The rise in interest rates that would have to result—not from any large-scale withdrawal of funds, but merely from the cessation of potential new inflows—would be sufficient to plunge the economy into recession, while triggering a free-fall for the dollar and then a surge of inflation.

Legislation such as the Bryant Amendment runs a serious risk of damaging foreign investor confidence in a number of ways. Already, it is seen by many of them and their U.S. financial advisers as intrusive, administratively burdensome, and inconsistent with existing treaty obligations. Our own banks and investment banks believe it would do great damage to their own competitive position and would ultimately drive business—and jobs—to other major financial centers where the climate for foreign investment would be viewed as more hospitable.

These are all formidable costs. Are the benefits commensurate with them? The judgment of exports is that they would not be. The information that would be collected is largely duplicative of existing reports to the SEC and other governmental bodies. The extra detail would provide no particularly useful information from the perspective of public policy. Admittedly, there are well-known gaps in the balance of payments reporting system that lead to large errors and omissions in those accounts. But professionals in the field have been at work trying to deal with these problems. Their efforts would not be helped by this amendment.

To conclude, it is often said that there is a continuing debate between two organizing principles for international economic relationships: reciprocity and national treatment. In the abstract, both have merit. Reciprocity appeals to our basic instinctive desire for fairness. National treatment reflects a different manifestation of fairness.

But in the kind of world we live in, where there are continously going to pressures to interfere with markets and to secure the interests of one group or another, strict reciprocity is a bad foundation for policy. It leads to restricted markets, higher costs, reduced economic efficiency, and fewer jobs.

National treatment, informed by a reasonable effort to achieve broadly reciprocal treatment for U.S. firms abroad, is a far better approach. The Bryant Amendment, by mandating a set of requirements for foreigners that is not to be required of American investors, is a serious departure from national treatment. It is therefore a serious step backwards from the longstanding U.S. commitment to free and open markets for which we are deservedly proud. We would be better off without it.

ANTHONY M. SOLOMON,
New York, NY, May 4, 1988.

Senator ERNEST F. HOLLINGS,
Chairman, U.S. Senate, Committee on Commerce, Science, and Transportation, Washington, DC.

DEAR SENATOR HOLLINGS: I am pleased to answer the questions that you sent me on April 11 as a follow-up to the Commerce Committee hearing on the Bryant Amendment. I trust your staff will show them to you. I will take them in order.

Questions 1 and 2:

The Federal Reserve Board of Governors have full powers to require information in regard to foreign takeovers of U.S. banks. Obviously, the Fed is most concerned by factors such as capital strength, quality of management, and the track record of the controlling interest in the foreign bank. It is less concerned—and correctly so in my opinion—about the more minor and less practical question of who the smaller beneficial shareholders are.

(Regarding the report about the Soviet scheme to buy several banks in the Silicon Valley, my understanding is that that is not a substantiated report. Have you asked the regulators about the accuracy of this rumor?)

Question 3:

You asked whether there is some percentage of foreign ownership of U.S. bank assets that would cause concern. Since any rational concern not based on xenophobia lumping together all foreigners would be related to the *concentration* of foreign institution and nationality ownership in U.S. banks—an overall percentage figure makes no sense. Currently, the dispersion of foreign nationalities who have ownership interest in U.S. banks is very wide. Furthermore, foreign banks who own U.S. bank assets are not only regulated by U.S. regulators, but are regulated as well by the Central Banks and regulatory agencies in the countries where they are headquartered. If those are responsible regulatory agencies who cooperate with the U.S. regulatory agencies, there is an even greater level of public regulation of foreign-owned banks in the U.S. than of U.S.-owned banks.

Question 4:

CFIUS was created to consider foreign government owned or controlled investment in the U.S. Although I was not directly involved when I was Undersecretary to the Treasury (it was chaired by the Assistant Secretary for International Affairs), my understanding was that it met as frequently as needed—that is—whenever the question of foreign government influence in a particular investment in the U.S. arose.

Question 5:

You ask how the Bryant Amendment and other similar approaches diminish the attractiveness of the U.S. to investors. A discriminatory requirement on reporting by foreign investors creates uncertainty as to their legal liabilities and uncertainty as to how they will be treated in this country. This will probably not deter very profitable investments (where we do not need them as much) but will diminish the attractiveness of the U.S. in the marginally profitable deals (where we are most anxious to have the favorable impact on U.S. jobs, etc.). Obviously, there is no quantitative way of pinning this down. Certainly, you would agree that to the extent that discriminatory or more burdensome reporting requirements for foreigners creates impressions of rising U.S. distrust of foreigners, the effect will be to diminish the interest of foreigners in making investment commitments to this country.

Question 6:

The reality of the U.S. dependence on foreign capital in financing its budgetary deficit is a fact of life. If it is not financed, interest rates will rise, and there will be a recession. Since the Treasury normally auctions all its securities in which both domestic and foreign buyers participate, it is inaccurate to assume that private sector foreigners react differently than domestic purchasers to all the complex factors that they consider when they put in their bids. The percentage of the Treasury's debt held by foreigners does not vary in proportion to the level of interest rates that are paid. Foreign Central Banks investing in Treasury obligations always accept without question market rates. I am opposed to the flotation of Treasury securities specifically for foreigners.

Sincerely,

ANTHONY M. SOLOMON.

The CHAIRMAN. Well, to get to the politics of a basic Congressman or Senator, how do you respond to the point made that, look, here is the U.S.-Canadian trade agreement and if Solomon Manu-

facturing has to go up into Canada you have to file all of these particular items, but if Canadian manufacturing comes back down into New York they do not have to file those things?

And we are being told by the Administration in one breath that this Canadian free trade U.S. agreement is wonderful and good for the economy, but in the next breath it is terrible, it is going to ruin foreign investment if you are going to require this kind of information.

Mr. SOLOMON. Canada has a special problem. It sees itself as a small pygmy country compared to this giant that they live next to. And there has always been this concern about, will they be swamped by foreign investment?

Now, fortunately, reason has begun to prevail over the last decade in Canada, and this is an important political debate that goes on in Canadian government circles. And there has been a gradual liberalization of Canadian attitudes toward foreign investment, including of course U.S. investment, in Canada.

We would simply—we might be discouraging further liberalization if we were to say, well, tit for tat. And it is meaningless. It does not do us any good to do this. So I think that it is poor policy, just because you can point to a country that has special reasons for doing this but is in the process of liberalizing this policy.

I think it sets us back, simply, to go ahead and retaliate.

The CHAIRMAN. It seems from the testimony the reasons are not special, but general. This applies to all other countries. I think what this committee is looking at is not disturbing the policy of foreign investment. We all like it, and we like for us to invest overseas, and we live in an international economy, and I think we are sophisticated enough to understand it.

But where other countries have found it necessary for policy—as a general rule, not just Canada but all these countries, and we have got listed all the requirements. When we look out there and get some of those requirements—and incidentally, not secret. I do not know what good it does for me to learn three years later of an analytical trend that I cannot cross-examine.

I do not know too much about government bureaus to have much trust in them. I can tell you that right now, particularly those that gather things secretly and report three years later.

So we are going to change that, I am confident. And while we are about changing that, then we are confronted with this matter of wanting to know. I guess we are all National Enquirer nuts up here now. We want to know.

And we do not want to delve into confidentiality, and we do not see these same companies—and I can list them—off investing in the United States, investing in all the other countries with that kind of information. In fact, that is where we try and get it now, is we go into the other countries, into the counterparts, and try to analyze it. But it is very cumbersome.

And we just do not understand that. Can you elaborate?

Mr. SOLOMON. Mr. Chairman, may I make a suggestion? If you believe, as you just said, that the confidentiality principle should be respected, then it seems to me that for the purposes of aggregate data information you should simply ask a group of statistical experts, what is missing, if any?

I do not believe that there is anything missing. And certainly you, among many other Senators, in the past have said that you do not want to burden people with a lot of bureaucratic duplication. And I do not believe that—there has been a lot of ignorance exchanged here, and I think the statistical experts should be asked their view.

Because it is only if you breach that line on confidentiality that it seems to me that you are getting into any new areas of information.

Mr. RICHARDSON. May I speak to that briefly, Mr. Chairman. Although I only served for a year as Secretary of Commerce, I did take quite a lot of interest in the Bureau of Economic Analysis and the data collection process generally. And I think there are two widely shared fallacies that bear on this debate.

One is the notion that you get a better picture of what is going on if you have universal data than sampling in depth. Of course, some of the legislation I have touched on does require universal reporting, but it is almost intrinsically unreliable.

For example, all the unemployment data, GNP data, productivity data, all of the information in the system of national accounts, is developed not by aggregating data universally, but by the very kind of sampling that was touched on here today.

If we really want to know what's going on in the context of foreign investment in the United States, that is how you find out. If, as it has been suggested, confidentiality is a significant problem, with respect to imposing more universal reporting requirements, you are almost sure to wind up with a more distorted result because people are going to take more trouble to operate through straw men and so on. They will just multiply the layers and use different routes or break up the enterprise into pieces so that it falls below the threshold or the dollar amount.

In short, the notion that you get a better fix on the policy issues via this route I think is fundamentally fallacious.

The Chairman. Professor Tolchin, would you like to comment? They all testified after you. Well, I will get back to you, Mr. Rosenblatt.

Dr. TOLCHIN. Well, I think there is a difference between imposing restrictions and requiring information, and perhaps that is the greatest misunderstanding with the Bryant amendment, which I support.

The Bryant amendment focuses on the inadequacies of data collection in the area of foreign investment. And I must say, this is my fourth book and I have never been so frustrated in terms of trying to get a complete picture in any field that I have investigated before. The Bryant amendment tries to improve that gap in data gathering.

Without going into the specifics, I agree with what Senator Harkin and Representative Bryant said this morning in terms of the inadequacies. So I will not repeat that.

There are other agencies that would also be covered by the amendment, where the inadequacy of data collection is especially frustrating. In agricultural land, for example, there is a law. As a matter of fact, the only law that requires annual data collection in-

volves farmland, because farmland does excite Americans. It is part of our Jeffersonian heritage.

Farmland was important enough to our people and to the Congress in the late seventies to pass the Agricultural Foreign Investment Disclosure Act. But for some reason, probably rooted in the legislative history, there is a giant loophole through which many investors have been able to go, leaving us with an inaccurate picture of how much farmland and timber land is owned by foreign investors. The loophole is a prohibition in the Act prohibiting the Department of Agriculture from going more than four layers (of incorporation) down to get to the ultimate beneficial investor. That is why you have such a high percentage of Nationals from the Netherlands Antilles owning farmland in the U.S.

That is frustrating. Why is there a loophole like that? I do not really know, but it is a loophole that certainly should be closed, because we want to know how much farmland is owned by foreign investors.

We also want to know how much urban real estate is owned by foreign investors, and that is not tracked by anyone as far as I know in any systematic way. So I think that there are data gaps everywhere.

I think the BEA does a wonderful job within the limitations of the law, and I think these limitations have been adequately spelled out. And I hope that the people in the Congress correct that law.

The ITA can only—they are the agency responsible for monitoring trends—go to secondary sources and public documents. Here you have the very agency in the Dept. of Commerce responsible for monitoring these trends prohibited also from delving as far as they should be able to delve.

There are lots of other inadequacies in the data. I will not bore you all with them. But I must say that the shortfalls, the aggregate nature of data collection, and also the crucial nature of this issue—the Wall Street Journal has called foreign investment the burning issue of the 1990's—all point to the need for improved information gathering.

You cannot make policy without data. We are flying blind at this point, almost blind in terms of the data collection. And I think that the current legislation will take a step in the right direction toward improving that.

The Chairman. Thank you.

Mr. Rosenblatt.

Mr. ROSENBLATT. Thank you, Mr. Chairman.

I will try not to repeat what was said. But there are a couple of additional points that I think that I could provide from my own personal and professional perspective on this issue.

You referred to the delay in the availability of the benchmark census, and I think that is quite a legitimate concern. But it also is a universal concern for all data that are collected on this magnitude. For example, the 1987 census of manufacturers is now being conducted and it will not be available really until twelve months, 15 months down the road.

You are just dealing with tremendous data problems, so that you have to allow time for proper analysis and treatment and so forth

to achieve the requisite degree of accuracy, so that the data you finally come out with are useful.

The other thing that I think I would like to stress, and I think this has again been lost sight of in this debate on the Bryant amendment and its adequacy for policy, is that I believe the whole focus of the Bryant amendment is on microeconomics while the need for policymaking is at the macroeconomic level.

And I am certain in my own mind, from my own experience in the government, from talking to people in BEA and Treasury who collect this data, that for purposes of macro policy making this information is more than sufficient. Not that it could not be improved. I am not going to say that, because any data system can be improved.

But certainly, the data that are collected on these monthly and quarterly surveys that Treasury and BEA conduct are fed into the BEA GNP estimates. They come out with a good deal of alacrity in terms of the preliminary estimates that are made on GNP. As better data come in, we revise the GNP. We revise our balance of payments numbers as we have more time to analyze what we have.

So I think that there is no question that from a macroeconomic policy point of view we have the best data system in the world.

The problem with the Bryant Amendment is that it wants to go transaction by transaction, and it wants to publish this information and it wants to publish business confidential information, for which I cannot find an overriding public policy need. It would clearly be anti-competitive to a foreign interest who wanted to invest in this country if he had to disclose not only the price—the price is all right—but his profits, his costs of operations.

Can you imagine how beneficial that would be to a U.S. firm or any other firm if he knew that kind of information? We do not make that information available on publicly-held companies. It is all consolidated. We do not do line-of-business reporting any more.

So if we impose that on foreigners, we are clearly having an anti-competitive effect. I think that there are other safeguards in our laws as regards national security, as regards the emptying out of America, as regards technology drains or dollar drains.

I think we can deal with all of these things and we do not need the specific transaction by transaction reporting that is required by the Bryant Amendment. I think aggregates are certainly something that should be made available and that are needed for policy reasons.

The CHAIRMAN. Well, please list for the committee—take that Bryant Amendment and later on just list it down those items that are not required, let us say, in a general sense by all other trading industrial free world capitalistic free enterprise democratic countries.

We appreciate all four of you. I know you all are busier than we are, and you have been very valuable help to the committee this morning. But we have got two other important witnesses that want to be heard before lunch, so we will thank you.

And if there are any further comments, you can submit them for the record. We will have some questions. Thank you very much.

We have got now Mr. Alexander, another Secretary; and John Hall.

Secretary Trowbridge, we welcome you to the committee. We are delighted to hear from you, sir.

STATEMENT OF ALEXANDER B. TROWBRIDGE, PRESIDENT, NATIONAL ASSOCIATION OF MANUFACTURERS, ACCOMPANIED BY STEPHEN L. COONEY, JR., DIRECTOR, INTERNATIONAL INVESTMENT AND FINANCE

Mr. TROWBRIDGE. Thank you, Mr. Chairman.

I am delighted to have this chance to appear before the committee and add to opinions and arguments on this issue. I will not by any means use the full text of my statement, which I trust is going to be put in the record.

The CHAIRMAN. It will be included. You highlight as you wish.

Mr. TROWBRIDGE. I will try and summarize the important points that do apply, I think, to the legislation being looked at; specifically, S. 1697, a bill introduced by Senator Harkin and its counterpart, Congressman Bryant's section 703 of the House-passed version of H.R. 3, the Omnibus Trade Bill.

The National Association of Manufacturers in common with other leading business organizations has strongly opposed the principle of foreign investment registration either as part of the trade bill or as a separate piece of legislation.

We believe that this legislation is discriminatory and unnecessary, and could encourage foreign discrimination against U.S. international investment and trade interests.

We also oppose more general efforts to restrict foreign capital inflows directly for economic reasons and believe that, instead, U.S. policy should aim for the early elimination of the Federal budget deficit and the reduction of the trade deficit through U.S. export growth.

The Harkin Bill, in our opinion, does discriminate against foreign investors, since it would require foreign persons and companies in many cases to disclose important and proprietary business information that U.S. companies in like circumstances are not required to publish.

The U.S. business community and the U.S. Government have opposed such discriminatory reporting in other countries because they are frequently used to hamper both trade and the efficient management of international business enterprises.

The Harkin registration proposal would require public disclosure by the foreign entity of details regarding acquisition of the property, the size of the interest acquired in the United States property and the price paid for that interest, detailed operating and financial information on the acquired enterprise as verified by outside audit, and the identity, nationality, compensation and related business interests of executive officers and directors.

In response to criticism of the burdensome nature of the proposal, allowances have been made for substituting documents of a similar nature. Section 703(f)(2) of the House Trade Bill notably allows the substitution of reports required by the securities laws for "information otherwise required under this section" when a foreign enterprise holds or acquires "a United States business enter-

prise which is an issuer whose securities are registered under the Securities Exchange Act of 1934."

But this provision leaves unclear whether current confidential attachments to SEC filings by foreign-owned companies would also be publicly disclosed. These attachments are typically material contracts relating to transactions described in SEC filings and obviously contain highly confidential business information.

This provision, in addition, ignores, for example, the discrimination implicit in requiring privately-held foreign firms to release data publicly when privately-held U.S. companies are not required to do so.

The justification for this discrimination appears to be that such information is needed in the public interest. In fact, we believe that there is at present adequate authority for gathering information on the growth of foreign direct and portfolio investment in the United States.

The publication of meaningful aggregate investment statistics based on the collection of such data has been speeded up by the Commerce Department in recent years. Commerce and other agencies do not release data that would disclose proprietary information on individual companies or on separate transactions. The only conceivable purpose behind the publication of such ordinarily confidential data is the harassment of individual companies and the discouragement of individual investments.

Let me cite as a small example a quote from Buying Into America on page 40, a book, as we know, co-authored by Professor Tolchin, who appeared this morning.

She stated that, "The governor's contention that jobs result directly from foreign investment is supported by Commerce Department data indicating the exact number of jobs traced to foreign-owned property, plants and equipment. The top five states are Texas, California, Alaska, Louisiana and New York, in that order, with Texas claiming 172,546 jobs from $22.4 billion in foreign investment."

I cite these figures only to show that the existing Commerce Department data, developed from five-year detailed surveys and annual survey updates, give a pretty adequate feel for the direction and rate of growth of inward investment.

Attached to my testimony, Mr. Chairman, is a copy of an article [1] which I was invited to write on inward investment for the magazine published by the German firm Siemens. This article pulls no punches in commenting on the concerns and criticisms expressed in the United States regarding foreign investment.

But whatever your view, I think it shows how publicly available data can be used to give a reasonably detailed picture of the current U.S. inward investment position.

We are reasonably confident, therefore, Mr. Chairman, that the major trends in inward investment flows are being captured by the present system of reporting and that business confidentiality required by individual companies is being sufficiently protected.

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[1] The article was not reproducible.

I can only cite and refer back to Elliot Richardson's list of the existing pieces of legislation which were numerous and, I am sure after you filled them all out, adequately burdensome.

Let me just summarize, as I have in my statement, a basic philosophical point which I believe many of us have agreed to and stated here this morning about the value of the free flow of investment both ways, into this country and American investment going out.

This is not necessarily a new phenomenon. You may well recall The American Challenge, the 1968 book by the French politician and economist, Jean-Jacques Servan-Schreiber, which created a lot of stir. He was making the point essentially that America was buying up Europe, and was going to take over. Europe seems to have survived; our investments there have also prospered.

We are basically, as an organization, urging the continuation of a pro-free flow of investment policy. We want to reduce those restrictions that apply to investments of American companies overseas. It does not seem to make much sense to add to our own restrictions in order to achieve that end.

In the manufacturing sector, I think there is some clear evidence of the gain in employment and technology that comes with foreign investment coming into the U.S.

There is the factor of import substitution in some cases created by the location of foreign investors' direct manufacturing facilities in this country, instead of exporting entirely to this country.

We have, of course, several witnesses who have noted that in view of the enormous Federal deficit and trade deficit figures of recent years, if we had not had the flow of foreign investment coming into this country, the liquidity problem and liquidity crunch created by those deficits without that replenishment would have been very serious.

Mr. Chairman, that summarizes my remarks. I have the full text for your review at your leisure, which I know you do not have much of; but that will do it for now.

[The statement and questions and answers follow:]

STATEMENT OF ALEXANDER B. TROWBRIDGE ON BEHALF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Chairman, members of the committee, I am Alexander B. Trowbridge, president of the National Association of Manufacturers I appreciate this opportunity to testify today on an issue that has become extremely important to our member companies, as well as to the economic future of our country.

This committee is at present considering S. 1697, a bill introduced by Senator Harkin. It is very similar to Section 703 of the House-passed version of H.R. 3, the Omnibus Trade Bill. NAM, in common with other leading business organizations, has strongly opposed the principle of foreign investment registration, either as part of the Trade Bill or as a separate piece of legislation. In my statement today, I wish to make two major points regarding our stand on this issue:

NAM continues to oppose establishment of a foreign inward investment registration requirement. We believe that this legislation is discriminatory and unnecessary. Moreover, it could encourage foreign discrimination against U.S. international investment and trade interests.

NAM opposes more general efforts to restrict foreign capital inflows directly for economic reasons. We believe instead that U.S. policy should aim for the early elimination of the federal budget deficit and the reduction of the trade deficit through U.S. export growth. Foreign direct investment in the United States in the 1980s has been in part a natural response to the sharp increase in these deficits.

I would like to devote the balance of my statement to the discussion of these two points.

NAM Opposes Registration of Foreign Investments in the United States

The Harkin bill would require the special registration by foreign persons of any acquisition of a "significant" interest in a U.S. property, or of a controlling interest in a U.S. business enterprise. It discriminates against foreign investors, since it would require foreign persons and companies in many cases to disclose important and proprietary business information that U.S. companies in like circumstances are not required to publish. The U.S. business community and the U.S. government have opposed such discriminatory reporting requirements in other countries, because they are frequently used to hamper both trade and the efficient management of international busiess enterprises. Even in these cases of foreign reporting requirements, however, the confidentiality of business information is usually respected.

The Harkin registration proposal would require public disclosure by the foreign entity of:

"Details regarding acquisition of the property; The size of the interest acquired in the United States property and the price paid for the interest;"

Detailed operations and financial information on the acquired enterprise, as verified by outside audit;

Identity, nationality, compensation and related business interests of executive officers and directors.

Moreover, the registered investor would have the burdensome duty of providing "an English translation of any public financial disclosures filed in the home country . . ." In Section 703 of the House Trade Bill, the foreign company would also be subject to reporting in the future "such other information as the Secretary [of Commerce] may require by regulation in furtherance of this Act." In both bills, the foreign company would have to update its reports annually.

In response to criticism of the burdensome nature of the proposal, allowances have been made for substituting documents of a similar nature. Section 703(f)(2) of the House Trade Bill notably allows the substitution of reports required by the securities laws for "information otherwise required under this section" when a foreign enterprise holds or acquires "a United States business enterprise which is an issuer whose securities are registered under the Securities Exchange Act of 1934." But this provision leaves unclear whether current confidential attachments to SEC filings by foreign-owned companies would also be publicly disclosed. These attachments are typically material contracts relating to transactions described in the SEC filings, and obviously contain highly confidential business information.

In addition, this provision provides relief of the reporting burden in only a few cases. It ignores, for example, the discrimination implicit in requiring privately-held foreign firms to release data publicly, when privately-held U.S. companies are not required to do so. Moreover, foreign-owned publicly-traded companies that already file reports with the SEC, such as foreign issuers that sell debt securities or American depository receipts (ADRs) to U.S. investors, would be expected to comply with the full reporting requirements of Section 703. This exemption gives no relief to most foreign companies.

The justification for this discrimination appears to be that such information is needed in the public interest. In fact, as the SEC and other data-gathering agencies under Administrations of both parties have indicated, there is at present adequate authority for gathering information on the growth of foreign direct and portfolio investment in the United States. In response to comments from NAM and other organizations, the publication of meaningful aggregate investment statistics based on the collection of such data has been speeded up by the Commerce Department in recent years. But Commerce and other agencies do not release data that would disclose proprietary information on individual companies or on separate transactions. The only conceivable purpose behind the publication of such ordinarily confidential data is the harassment of individual companies and the discouragement of individual investments.

In support of my contention that the public need to know is adequately served by present government data collection and publication provisions, let me cite as a small example a quote from *Buying into America* (page 40), a book co-authored by Susan Tolchin, one of the other witnesses scheduled to appear today:

The governors' contention that jobs result directly from foreign investment is supported by Commerce Department data, indicating the exact number of jobs traced to foreign-owned property, plants and equipment. The top five states are Texas, California, Alaska, Louisiana and New York, in that order, with Texas claiming 172,546 jobs from $22.4 billion in foreign investment.

I cite these figures to show that existing Commerce Department data, developed from five-year detailed benchmark surveys, with annual survey updates, give a pretty adequate feel for the direction and rate of growth inward investment. These reports—on both inward and outward investment—were developed in conformity with the mandates of the International Investment Survey Act, passed by Congress in 1976.

The overall Commerce Department numbers are in line with most subjective observations regarding foreign investment in U.S. manufacturing. This would tend to indicate no general avoidance of correct reporting. As evidence of this point, Mr. Chairman, I have attached to my testimony a copy of an article that I was invited to write on inward investment for the magazine published by the German firm, Siemens. This article pulls no punches in commenting on the concerns and criticisms expressed in the United States regarding foreign investment. But whatever your view I think it shows how publicly available data can be used to give a reasonably detailed picture of the current U.S. inward investment position. I would ask that this article be included in the record of this hearing.

The Tolchins and others have cited cases where ultimate beneficiary owners have evaded reporting requirements—notably a case involving Soviet efforts to acquire several small banks in California. The intermediary in that transaction, I should note, is now reported to be serving a prison sentence for fraud. This frequently cited story mixes up two quite different concepts of investor reporting:

Confidential reporting for purposes such as national security, antitrust law enforcement and taxation;

Public reporting for national statistical and economic policy purposes—this type of reporting works best, in fact, when reporting companies are confident that confidential and proprietary information will not be publicly disclosed.

We are reasonably confident, Mr. Chairman, that the major trends in inward investment flows are being captured by the present system of reporting, and that the business confidentiality required by individual companies is being sufficiently protected.

NAM Opposed Direct Restrictions on Foreign Capital

On the broader issue, our organization has always supported the free international flow of capital when it follows economic opportunity, allowing for appropriate monitoring of legitimate national security concerns. That is still our position, and we have strongly opposed sweeping and discriminatory legislation proposed as part of the Trade Bill.

Discriminatory treatment is contrary to the free market economic principles that encourage business investment in the United States in the first place. A discriminatory policy also ignores the possibility that such restrictions will justify an increase in foreign restrictions on U.S. investment abroad, just when it appears that we are making some progress in convincing other countries to eliminate investment restrictions that interfere with U.S. exports. This has also long been a position held by Administration of both political parties.

With an officially estimated net international debt position of $264 billion at the end of 1986, the U.S. is now a bigger debtor than Brazil and Mexico combined. Important and reasonable questions have been asked in the United States about the strong growth of foreign direct investment inflows, and their implications for the future of U.S. international competitiveness. In part, these questions derive from the unaccustomed U.S. position as a net international debtor and the rapidity of the change. From a $140 billion credit position in 1981—the world's largest—the United States has swung sharply in the opposite direction by $400 billion in just five years.

Over the past decade, the foreign direct investment position in the United States increased at an annual rate of over 22 percent per year. That's a sixfold increase in book value, from $35 billion in 1977 to $209 billion in 1986. During this period the gap between foreign direct investment in the United States and the U.S. direct investment position abroad narrowed from a peak of $120 billion in 1981 to $51 billion at the end of 1986. This $70 billion change plus a net increase of $166 billion in foreign private holdings of non-government portfolio securities account for more than half of the $400 billion net change in the total U.S. international investment position since 1981. In other words, our trade and current account deficits of the 1980s have largely been paid for by the enticement of increased private foreign investment—both direct and portfolio—in the United States.

One NAM Board member expressed rather succinctly and clearly in a recent meeting the ultimate causes of this situation: ". . . Foreign investment was an absolutely inevitable consequence of our monetary, fiscal and trade policies in the last

two decades. It could not have been avoided, given the paths that we chose. That doesn't say it's good or bad, that just says, what did you expect?"

Restricting Foreign Investment Will Not Solve the Trade Problem

Professional economists warn that foreign capital inflows are essential if the United States is to pay for the profligacy of our twin budget and trade deficits. Lester Thurow and Laura Tyson in a recent article in *Foreign Policy* call these deficits the "black hole" of the international economy, because of the way they pull in investment flows from abroad. The difference between a sharp cutoff in these inflows that creates a sudden U.S. financial panic and a more gradual adjustment process marks the difference between a "hard landing" and a "soft landing" for the U.S. economy.

The problem was addressed at some length in a report last year by the staff of the Joint Economic Committee. The report emphasized the precarious nature of the economic recovery: ". . . The outlook for improved growth remains clouded, and cracks are starting to appear in the ice. One of the most prominent of these cracks is the enormous burden of international debt that the United States has acquired in the past few years."

But the report carefully noted the distinction made by the Reagan Administration between foreign direct and equity investments on the one hand, and contracted debt service obligations on the other. With direct, investment, the level of outflows depend on the success of the enterprise, so that there is a pay-back of increased job opportunities and growth in the United States. With contracted debt-service obligations, such as foreign investments in government bonds, a fixed level of interest payments must be met, whatever the country's economic performance. Even so, both types of investment create potentially very large earnings outflows in the current account, which must be balanced by a more positive trade balance—meaning reduced consumption of imports and a lower U.S. living standard.

Therefore, if foreign capital inflows fall rapidly, we will be forced to achieve a balanced trade account in short order through classic austerity measures that will reduce import demand and domestic growth. If foreign inflows remain strong—and I think they will because of long-term interest among foreign direct, institutional and private investors in increasing their U.S. market position—this will give us the breathing room to adopt a more gradual corrective strategy. Such a strategy must still emphasize policies to improve the competitive export position of the U.S., as well as reduction of the consumption-stimulating U.S. federal budget deficit.

Since the dollar has fallen so dramatically, I am hopeful that foreign direct investment will play a contributing role in reducing our trade deficit through a contribution to exports. Most of the growth in inward direct investment is from our major industrial competitors. It is interesting that the exports associated with foreign-owned manufacturing affiliates held up surprisingly well during the high-dollar era of the early 1980s. After rising sharply at the end of the 1979–81 U.S. export boom, such exports stayed at roughly the $13 billion plateau in 1981–85. With the big fall in the dollar, we should anticipate renewed export growth from American-based foreign-associated manufacturing affiliates in the annual data for 1986–87, plus evidence of some shift to local sourcing away from imports.

FDI inflows will not magically solve the balance of payments problem over the longer term. I do believe however, that such inflows will help American industry find its way into more export markets, and will make us more competitive despite the concerns about foreign takeovers that have been raised.

A restrictive policy toward such inflows is short-sighted and self-defeating. Why destroy our economy's greatest asset, a free and open market? There may be scope for improving the protection of national security, which we believe Congress can address through very limited adjustments to present law and policy. As for takeover policy more generally, NAM supports changes in takeover laws—but on a non-discriminatory basis to be applied to all investors, not just foreign acquiring companies.

Foreign direct investment flowed to the United States because of the opportunities created in the U.S. market. To some extent, these opportunities have been created by fiscal and budgetary policies that have over-stimulated domestic consumption, and by inattention to the competitive impact of an overvalued dollar. But we must also look at these increasing inflows as a part of the competitive maturation of European and Japanese-based international business enterprise. Above all, the increased access of foreign investors and producers to the U.S. market should serve as one of our arguments in urging the reduction of trade and investment restrictions worldwide.

QUESTIONS OF THE CHAIRMAN AND THE ANSWERS

1. The United States is not "broke" in any sense of the word. I would agree with the tenor of your question, in that we have certainly made some very unwise fiscal and economic policy choices. As a result of our unprecedented series of $100 billion-plus current account deficits, our net international indebtedness reached about $260 billion by the end of 1986, according to official estimates. This amount will increase proportionately on a regular basis with the continuation of our current account deficit, even if that deficit starts to fall due to improved trade performance—at least until we are actually in surplus on current account. And I do not foresee this latter development occurring anytime soon.

Clearly the U.S. needs some major changes in economic policy, along the lines envisoned, for example, in the Gramm-Rudman-Hollings budget deficit reduction proposal, that we supported. Despite our economic problems and a need to adopt corrective policies, foreign investors continue to have confidence in the long-term performance and free market economic system of the United States—unlike the situation in many other debtor nations. They are willing to maintain and to increase equity investments whose returns are predicated on performance of the investment and the U.S. as a whole, not just a fixed interest return.

In the short and medium term, increased foreign equity investment here increases current account outflows. The recently reported 1987 current account figures show for the first time since World War II that the investment and services balance was negative and actually worsened the total deficit, instead of offsetting the visible trade deficit. That is indeed the price we pay for using foreign capital to help finance the trade deficit. But over the longer term, increased integration of foreign and U.S.-owned industry will assure improved competitiveness, greater market access for U.S. exports, and perhaps a greater degree of import substitution. Of equal importance, it may ease the pain of the adjustments needed to reverse the current account deficit, by supporting jobs and industrial activity. All this presumes, of course, no future dollar misalignment, as occurred in the early 1980s and deflected productive activity away from the United States.

2. NAM has 13,171 member companies, according to our most current information. Membership in our organization is based on engagement in manufacturing in the United States. As far as subsidiaries of foreign-owned companies are concerned, we would deal ordinarily with the headquarters of the U.S. subsidiary, rather than directly with the worldwide headquarters.

Therefore, we do not keep any independent internal data on the location, structure or operations of the foreign parent corporation.

As I indicated in my testimony, foreign-owned manufacturing companies operating in the U.S. comply with the same tax, labor, environmental protection and antitrust laws as U.S.-owned companies. That is why we welcome their participation in NAM. Indeed, a few years ago a top executive of Shell Oil USA, James Henderson, served a term as chairman of the NAM board. And conversely, U.S.-owned NAM members are usually welcomed and active as participants in national trade associations in foreign host countries.

3. The decision to publish this Conference Board series was made within the International Affairs Division, in response to increasingly frequent questions from industry at large and particularly from state government offices. The quarterly list of new foreign company investments in the United States was based on public information, culled from domestic and foreign press sources. We filled an existing information gap by consolidating a summary of transactions in a single, regularly published source.

I have been told that this series has now been discontinued, because of the publication by the Commerce Department of a series providing similar information, and because the labor-intensive nature of compiling this data made the expense difficult to justify.

4. There are two different issues raised by this question. First, there is the economic impact of major investment trends. We believe that the data collected under the International Investment Survey Act of 1976 and other legislation provide an excellent basis for monitoring these developments. I believe that the article enclosed with my testimony—which was totally based on publicly available statistical data—supports the view that we have adequate data collection for these purposes.

Second, there is the question of the impact of specific investment transactions, particularly on national security. We believe that the record shows no major national security lapses that have occurred due to inadequate levels of reporting. Inaccurate reporting or outright fraud is another matter, which is already punishable by

law. We see no national purpose to be served by making available to the public commercially sensitive corporate information on individual investment transactions.

5. Let me answer this question by citing a reciprocal example in the European Community. In the early 1980s, members of the European Commission advocated a series of extensive new information and consultation requirements, usually known collectively as the "Vredeling Directive." This would have released confidential company information on worldwide activities and plans, beyond anything presently required in the United States, Europe or anywhere else. Some aspects of this proposal are similar to the registration requirements proposed in the trade bill. U.S., Japanese and other non-EC investing companies convincingly demonstrated to the European Commission that such a proposal would have a serious "chilling effect" on new investment initiatives.

6–7. I am answering these questions together, since they both deal with foreign investment restrictions in Japan. Using later published figures than those you cite, we find that in 1980–86, US. direct investment in manufacturing in Japan increased by 10 percent per year, to a total of $5.3 billion. Such a level of investment appears to lead you to conclude that Japan's well-documented investment restrictions have neither harmed the Japanese economy nor discouraged foreign investment.

Let's take the latter point first. U.S. direct investment in manufacturing in Japan could easily be *ten times* the present level, had investment restrictions there been no greater than in the U.K., Germany or the other more open EC economies in the postwar era. U.S. investment in manufacturing in the EC is already at this level ($52 billion). While the total internal EC market is larger than Japan's, the Japanese economy has grown much faster and is generally much more attractive as an export base to third countries. I know of few industries which would not have undertaken a considerably larger program of investment in Japan, either to gain greater domestic Japanese market share or for worldwide export purposes, had Japan been more open to foreign investment. I should also add here the important technical point that the current dollar value of existing foreign investment in Japan is considerably inflated by the change in exchange rates in recent years.

Now to the other point: has Japan itself been hurt by investment restrictions? I think the answer is clearly yes, if we look beyond trade balances and export competitiveness. The OECD, the U.S. government and virtually every international organization have commented on the imbalance in Japan between domestic economic development and export-led growth in the international sector of the economy. Shutting foreign competition out of the domestic consumer and capital goods markets in Japan—either as investors or as exporters—has created an expensive structure of protectionism that reduces the purchasing power of the income of every Japanese citizen.

Moreover, as indicated by the increasing number of successful GATT cases and bilateral trade actions taken against such restrictions, the maintenance of this closed structure is not sustainable indefinitely. Japan's own Mayekawa Commission issued a report urging a more open economy to correct these imbalances and reduce the international pressure on Japan. There is evidence that Japan is becoming more open to foreign imports and investments—though of course not quickly enough from our point of view at NAM. There are many things we as a country can learn from the Japanese economic miracle, but reducing U.S. living standards and discouraging foreign investors through investment restrictions are not among them.

The CHAIRMAN. I thank you.

Mr. Hall.

STATEMENT OF JOHN HALL

Mr. HALL. I thank you, Chairman.

I believe I represent, from listening to the testimony this morning, probably a pretty critical portion of the people that could be affected by this proposed law, and I am very happy to have the opportunity to come here and talk this morning.

I represent a cross-section of the high technology group, the private company group, and possibly the group that has been taken over by a foreign company and had its technology taken off to a foreign country.

My name is John Hall. I have been an electronics engineer since 1952, and I have designed many products of strategic importance.

My technology and company were taken over by Seiko Epson in 1986. I think my story should be of interest to this committee.

I developed the technology that made possible Seiko's first electronic watch. I developed the technology that made possible Sharp's first hand-held electronic calculator. I developed the technology that made possible the first implanted programmable heart pacemaker. I am an expert in the semiconductor technology that allows computers to interface with the outside world.

Among the technologies I have developed for the U.S. military are the technology vital for the B–1 bomber's, revolutionary navigational radar; the technology vital to the Star Wars program; the technology that is vital to the detection of the next generation of submarine; and technology that is vital to dozens of other high technology programs.

John Hall is the inventor and has patented these technologies. I am 55 years old, a native of West Virginia, educated in Ohio, and presently live in California.

In the early 1970's, Seiko Epson and I founded a joint venture in California called Micro Power Systems. This company was to develop and manufacture advanced semiconductor products. By 1986, Micro Power had grown to 485 employees, had annual sales of $50 million, and was in a position to go public.

My technologies and products were developed at Micro Power, and I assigned the patents and the inventions to Micro Power in expectation of an American public offering with American investors.

But in 1986, Seiko Epson threw me out of the company, hollowed out the company by taking the company's technology and its manufacturing capability to Japan, eliminating over 250 employees, and bringing the company to the brink of insolvency.

Seiko Epson did this to acquire my technology and, I believe, exported it from Japan to mainland China. The U.S. Government in 1984 advised me that this technology could not go to China. It can be used in guided missile guidance systems.

Seiko Epson wanted the technology to go to China, and now Micro Power and Seiko Epson are being investigated by the Commerce Department and the FBI for possible export control violations and fraud.

Also, Seiko Epson wanted control over my technology and patents that may be the key to America's commercial future in microelectronics.

I am not against foreign trade, foreign free trade, I am in favor of responsible foreign investment that does not cause skilled jobs to be lost or vital technologies to be exported to America's detriment.

My case shows that not all foreign investment is responsible, and I think our government should know in advance about takeovers and investments that might damage the national security and the national economy.

I am currently suing Seiko Epson in the California courts, but no financial award can undo the damage that has been done to my country, to my state and my many friends who have lost their jobs as a result of these terrible actions taken by Seiko Epson.

I would like to state that I have started a new company, and that company is backed by French investors in whom I have a great deal of confidence. I am for good foreign investment.

Second, I would like to personally thank Representative Helen Bentley for her efforts in bringing my story to the attention of the Federal Government.

Finally, because my time is limited, the details of the technology transferred to Japan and to China and the details of the importance of my technology to the next generation of semiconductors are in my written testimony already before this committee.

Thank you.

[The statement follows:]

STATEMENT OF JOHN H. HALL

My name is John Hall, and I am a semiconductor engineer and founder of a once prosperous Silicon Valley company that once employed 450 people. I support legislation that would allow the government to know when foreign persons acquire or own significant interests in United States companies, especially companies that control strategic technical assets.

After describing my background and story, my testimony will relate that the majority shareholder (Seiko of Japan [1]), of my prior company Micro Powers Systems, Inc. ("Micro Power"), asked me in 1983 to cooperate with a Japanese trading company and Chinese officials to transfer high accuracy data conversion technologies I had invented to China. After consultation with intelligence representatives of the United States government, I refused. These technologies could assist the Chinese in increasing ballistic missile accuracy, and are similar to technologies Micro Power has supplied to United States missile defense efforts through third-party Defense Department contracting firms. Seiko removed me from Micropower in 1986 as the culmination of a three-year effort, and then transferred the company's advanced patented technologies to Japan, shutting down most United States production and terminating 200 employees. The company is no longer an American manufacturing entity, now relying on foreign production to market its products. Seiko has opened factories in China and may as a concession have recently transferred the strategic technologies I developed to China, which the Chinese earlier wanted, and our government had successfully prevented.

In the absence of foreknowledge of Seiko's majority ownership of Micro Power, the U.S. government had no idea what Seiko was doing, and only now are Seiko and Micro Power being investigated by the Commerce Department for export control violations and damage to jobs and competition in the United States economy, and only now have the Defense Department, Treasury Department and Patent Office been alerted to possible violations of United States laws.

Accompanying [2] this prepared testimony are letters (1) dated December 15, 1987 from Representative James Florio to Undersecretary for International Trade, Bruce Smart, raising substantial questions regarding the Micro Power "takeover" (Exhibit "A"), and (2) Mr. Smart's response of February 17, 1988 (Exhibit "B"). I have also recently responded to Representative Florio's letter in light of Mr. Smart's letter by the accompanying March 17, 1988 letter (Exhibit "C"). Critical questions in this Commerce Department exchange relate to (1) the nature of the highly advanced technologies that Seiko has pirated from me as the inventor and the American company Micro Power, (2) the strategic and economic risks to America posed by the loss of this technology, as well as (3) what the government could do to prevent such damage if it had been informed in advanced of ownership interests. My testimony seeks to address these questions.[3]

I favor a system of reporting, precisely because the questions my case raises are difficult and may upon investigation establish or not establish violations of U.S. law. The government itself has recently concluded that what appeared to be a strategic blow to United States security in the Toshiba affair now appears to relate to previ-

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[1] Seiko Instruments, Inc. and Seiko Epson Corporation.

[2] The accompanying material was not reproducible.

[3] For the committee's reference, a copy of a study which I commissioned is attached hereto as Exhibit "D." This study investigates the strategic implications of Japanese direct foreign investment in United States companies such as Micro Power.

ously transferred technology. As regards American firms controlled by foreign persons, a systematic knowledge datebase referencing control over vital technologies could put our government on firmer international footing in assessing the strategic and economic effects of technology transfers—or preventing damaging transfers in the first instance.

BACKGROUND

I am respected internationally as an authority in semiconductor design and manufacturing technologies. I graduated from the University of Cincinnati in 1962, with a degree in electrical engineering, and was thereafter employed as a semiconductor engineer for General Electric, North American Rockwell, Honeywell, and Union Carbide Semiconductor, designing then state-of-the-art integrated circuit technologies. In 1967, I joined Intersil, a pioneering Silicon Valley company, with founder Jean Hoerni. As head of research and development of Intersil and later as president and chief technologist at Micropower, I designed some of the world's most advanced complimentary metal oxide semiconductors (C-MOS), used in the worlds' first electronic watches and hand held calculators. I invented and patented significant semiconductor technologies, used in these and other microelectronic devices. A partial list of patents, crediting me as the inventor, is as follows:

Patent No. and patent title

3,883,889.—Silicon—Oxygen—Nitrogen Layers for Semiconductor Devices.
4,566,914.—Method of Forming Localized Epetaxy and Devices Formed Therein.
4,265,935.—High Temperature Refractory Metal Connect Assembly and Multiple-layer Interconnect Structure.
4,152,823.—High Temperature Refractory Metal Connect Assembly and Multiple-layer Interconnect Structure.
4,318,118.—Semiconductor Structure and Method.
4,042,953.—High Temperature Refractory Contact Assembly.

These patented technologies, and other innovative semiconductor technologies, provided breakthrough designs for electronic products I engineered. A partial list of such products is as follows:

Commercial Technologies:
Design process technology for world's first electronic watch.
Design process technology for world's first liquid crystal display digital watch.
Design process technology for world's first hand-held calculator.
Design process technology for world's first electronic camera shutter.
Design process technology for voice synthesizers.
Design process technology for color television cameras.
Design process technology for power programmable heart pacemakers.
Design process technology for subterranean oil well resistance logging device.
First refractory metal high speed C-MOS technology.
First precision integrated circuit compatible thin film resistor process.
First monolithic C-MOS 10, 12, 14, and 16 bit digital to analog converters.
Military Technologies:
Miles Program—a laser-target scoring integrated circuit for NATO war games applications. The contractor was Xerox Electro Optical Systems.
Low cost Sono Buoy Program—a combination linear and digital integrated circuit chip which allows a low cost system for locating submarines to be produced. The contractor was Sippican.
B-1 Bomber—phased array control module of the B-1 Bomber phased array radar antennae. Each radar antennae uses approximately 1,600 of these modules.
SDI—AOA Program—four high speed data acquisition and signal processing integrated circuits which process information from the infrared focal plane array anti-ballistic missile system. Contractor was Aerojet General.
SDI—AOA Program—a very low noise preamplifier used in conjunction with an infrared focal plane array anti-ballastic missile system. Contractor was Hughes Aircraft.
AMRAM Missile Program—a 14-bit digital to analog converter which converts computer outputs to linear control signals. Contractor was Hughes Aircraft.
Various space programs—a 16-bit digital to synchro converter IC used to convert computer outputs to linear control signals. Contractor was TRW Systems.
SDI—AOA Program—a 2,000 line multiplexer IC which scans the infrared sensors on an infrared focal plane array anti-ballistic missile system. Contractor was Westinghouse.

Various space programs—a high speed (25 megahertz) low power 8-bit analog to digital converter. Converts linear signals to digital computer signals.

Various space programs—a low power consumption 12-bit radiation resistant digital to analog converter used to convert digital computer outputs to linear control signals.

Various space programs—highly radiation resistant operational amplifiers and precision voltage references for application in military satellite applications. Contractor was Sperry Flight Systems.

Advanced submarine program—a very low noise preamplifier and filter system for sonar applications on the next generation submarine currently in design. The contractor was Naval Underwater Research Lab.

Various missile and space programs—specialized linear integrated circuits for missile systems. Contractor was Litton Systems.

Military satellite program—a very high speed (2 megahertz) 12-bit low power consumption analog to digital converter, which converts precision analog signals to pulse coded modulation signals for digital communications between a ground station and a satellite. Contractor was Westinghouse.

The Tiger Tank Program—a very complex array of 15 linear amplifiers used to control the functions of a tank's electronic system. Contractor was Hughes Aircraft.

Many of the commercial technologies described above, although developed and patented in the United States, are now being applied only by Japanese corporations. Most of the watches, calculators, televisions, video recorders, direct random access memory chips, machine tools, and compact disc players sold in the United States are made in Japan despite the fact that American ingenuity in large part developed the underlying technologies. The extent to which the above military technologies should be available to a foreign corporation is a policy question best answered by an informed government. I have first hand knowledge of these issues through my experience as the founder with Seiko of Micro Power in Santa Clara in 1971.

In 1970, while at Intersil, it became increasingly apparent to me that an electronic age dominated by smaller, and faster integrated circuits was coming to America's consumer and military procurement economies. I wanted to start a new company dedicated to the design and manufacturer of very advanced semiconductor technologies. The president of Seiko, Mr. Hattori, understood the value of my vision to the future of Seiko's then young and largely mechanical watch business. Consequently, Seiko invested approximately $1 million in cash and credit line, and I contributed inventions and technology in the foundation of Micro Power in 1971. From a few employees and no sales in 1971, the company grew to a gross sales rate of $50 million annually by 1986, and over 450 employees. Most of the products above listed were developed by me at Micro Power and all of the patented technologies I invented were assigned to the company. Micro Power was not always profitable on the bottom line, because it plowed its considerable internal profits largely into research and development efforts so as to create the startling new technologies. Despite repeated requests, Seiko refused to provide more equity capital over the years, insisting on debt financing instead. No group of American investors ever owned more than 49% of the company's stock.

In 1986, as the culmination of a concearted effort,[4] I was removed against my will from the company's board and as president and chief executive officer. Since then, the company has fired some 200 employees, substantially cut back production of products, and attempted to retool its structure to be a marketing arm for Seiko products only. Most importantly for this Committee, within months after Seiko removed me from the company and the company terminated most persons in key management who had supported me over the years, Seiko caused Micro Power to transfer to Japan all the documented technologies subject to my various patents. In essence, these important technologies, once the product of an American based company with an American profile, are now going to be freely exploited by a foreign corporation outside the jurisdiction of American governmental review. The following two sections of this testimony discuss the implications of the same.

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[4] I am currently engaged to litigation against Seiko in the California courts, where I expect to be significantly vindicated financially. A discussion here of how Seiko took control of Micro Power from me would serve no purpose. Rather, those issues will be addressed in the pending litigation. I firmly believe that whatever the result in the litigation, no financial award can undo the damage done to this country's national defense and electronics industry—both in terms of technical loss, competitiveness, and loss of jobs.

NATIONAL SECURITY IMPLICATIONS

As described above, I learned the art of custom integrated circuit design in working at Honeywell, North American Rockwell and Union Carbide, designing computers and missile and aircraft guidance systems. Prior to my removal from Micro Power, the company had sold some $7 Million in customized chips for the revolutionary phased-array radar systems, used in the B-1 bomber. The C-MOS integrated circuits I developed, unlike ordinary silicon and silicon compound circuits, use heat-resistant molybdenum for most of the circuit interconnections, enhancing the circuits' applicability for heat and radiation resistant uses. Micro Power's superspeed flash converter, allowing digital to analog conversion at unusual speeds, was supplied to third party defense firms under contract with the Department of Defense for missile guidance system control. My qualifications at the Department of Defense are extremely well-known among the Department's key technologists and advisors.[5]

Micro Power's revolutionary digital to analog converter technology provided 12-bit and higher accuracy with .01 linearity, which the Defense Department has advised me is restricted technology. This technology is used in target area inertial guidance systems, providing near-perfect accuracy for ballistic missiles.

In the 1970s, the president of Seiko introduced me to a prominent Japanese trading firm involved in bilateral trade with the People's Republic of China. Representatives of the trading company put me in touch with Chinese semiconductor manufacturers in Beijing and Shanghai. The Chinese were principally interested in acquiring the 12-bit accuracy data converter technology. Preliminary agreements were entered into in 1983 for a technology transfer in exchange for substantial financial commitments of several million dollars to Micro Power. Micro Power approached the State Department to obtain information regarding export license compliance. Shortly thereafter, a representative of the Central Intelligence Agency visited me personally in Santa Clara, and advised me that under no circumstances would Micro Power be granted an export license with respect to this technology. I fully cooperated with my government, and refused to allow the company or Seiko to transfer the date converter technology, or any other technology, to China.

As a result of the Micro Power takeover by Seiko in 1986, all of the converter technology and other integrated circuit technology of Micro Power was freely transferred to Japan. I believe COCOM and the defense Department should be promptly alerted as to this transfer, so as to assure that employees of Seiko do not transfer the technology to China, consistent with prior efforts of the trading company and the Chinese semiconductor manufacturers.[6]

In sum, Seiko's takeover of Micro Power has resulted in the transfer of significant military technologies to Japan, where export control is notoriously less stringent than in the United States.

AMERICAN COMMERCIAL COMPETITIVENESS AT RISK

Direct foreign investment should serve both the interests of the foreign company and the interests of the host country. My case illustrates that these interests are not always compatible. Indeed, Seiko has destroyed the commercial viability of Micro Power, and terminated hundreds of skilled semiconductor employees in California. Seiko also now controls Micro Power's significant molybdenum gate semiconductor technology. Documentation and information regarding the company's innovative molybdenum gate technologies have been provided to Seiko's Japanese technicians

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[5] As president and chief executive of Micro Power, I did not enter into "classified" contracts with the Department of Defense due to Seiko's controlling ownership. My process designs for military uses were until Seiko's takeover of Micro Power available only to authorized American companies working under classified Defense Department contracts which very often require nonclassified, but highly sensitive, components, that by themselves are restricted for export by the United States government and COCOM.

[6] Notably, as recently as January 25, 1988, it was announced (Exh. "E") that Seiko Epson Corporation was going to open a 1.3 million unit per year watch factory in eastern China. In exchange for opening markets and production capacity, the Chinese have historically requested concessions in the way of access to new technologies, and I am concerned that the converter technology may be transferred to Beijing in violation of COCOM restrictions, endangering the United States national security. After subsidence of political concern over the Silkworm missile affair last year, the Chinese have regained permission to import American high technologies. The data converter technologies at issue, if restricted by COCOM, may not be transferable regardless of this change in status. An inquiry is reasonably called for. While there may be many explanations as to why Seiko took control of Micro Power, it is interesting that one of my last conversations with Seiko's president Mr. Hattori prior to my removal, was a telephone conversation from Mr. Hattori, originating in mainland China.

and transferred out of the country. The significant high technology patents I previously controlled at Micro Power are now subject to Seiko's direct control for royalty or infringement purposes.

Micro Power's innovative complementary molybdenum metal oxide semiconductors provide for linear micro processing at five times the speed of conventional silicon based circuits. Virtually all American semiconductor manufacturers are now dedicated to polycrystalin silicon interconnect semiconductor technology. This technology, due to the polycrystal nature of the silicon, limits the high speed performance of the IC technology due to significantly greater resistance in the interconnect systems. In cross-licensing Micro Power's molybdenum gate technology, Texas Instruments in 1985 gave Micro Power access to all of its patented technologies, licensed to other companies for an amount in excess of $100 million. The Micro Power linear technology is very valuable to the holder of the patents.

The molybdenum C-MOS technology will provide central processing capabilities five times that of today's computer makers, and when similar line dimensions are utilized, this technology operates at five times the speed of the U.S.-developed VHISIC technology. Control over the Micro Power technology allows a Japanese corporation to perhaps dictate the future of American competitiveness in the high speed linear and digital integrated circuit field by preventing competition or charging large royalties; domination by Japanese corporations of the DRAM chip market has already had significant negative effects on the United States computer industry. Government agreements to bring Japanese DRAM prices to market value have apparently caused an extreme shortage of such chips among American computer manufacturers. Seiko's capture of the next generation of technology—the refractory metal interconnect systems—could result in another and much more dramatic blow to the American electronics industry.

WHAT CAN THE GOVERNMENT DO?

Having done substantial business with Japanese companies over the years, I understand the importance of a free-trade policy. Protectionist reactions to the Japanese trade imbalance are misplaced as regards many industries affected by foreign competition. The national security and technical competitiveness implications of my case do suggest, however, substantial benefits that might be realized when our government is informed of foreign control of strategic companies.

First, a monitoring system cataloguing American companies controlled or taken over by foreign interests is a logical primary step. Certainly Japan, Great Britain, and most Western countries have government mechanisms to review and/or approve direct foreign investment of any magnitude.[6a] As described in the accompanying study, the Commerce Department already collects data on foreign investments, but the data is necessarily limited to public information only. A comprehensive reporting requirement could be advantageous to this country in a number of critical ways.

For instance, in the Siko/Micro Power case, Seiko has succeeded to significant United States technology patents and defense-related designs that were nominally in the hands of an American company. If the Secretary of Commerce were aware that Seiko had a majority or controlling interest in a high-tech United States company, Commerce could quickly compile those patents and technologies that could be misused contrary to our interests, and inform the appropriate segments of government and the foreign company in advance of the restricted nature of the technologies.[7] A foreign corporation could be expected to be responsive and cooperative if this country or COCOM expresses restrictions; it is often individuals in a company that engage in secret export violations that could be prevented if the company or the government openly advised otherwise in advance.

Moreover, knowledge of foreign corporate control of key American industries would likely lead to greater, not lesser, government to government dialogue on a

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[6a] See, Felix Rohatyn, "America's Lost Independence, "*The New York Review*, February 18, 1988.

[7] The Commerce Department in California has recently begun an export violation investigation of Micro Power subsequent to the Seiko takeover. An inquiry as reflected in the letters to and from Representative James Florio has brought the matter to the attention of the Commerce Department, Treasury Department, Department of Defense, the Patent Office, and ultimately CIFIUS. I believe the government should investigate the sensitive nature of the technology. Technical advances are usually incremental as the Toshiba affair suggests. Today's controlled technologies may be freely available in tomorrow's marketplace. It would be far preferable to know in advance that foreign control of certain technologies is permissible rather than investigating potential security violations after the fact.

policy level. This could strengthen Japan's internal review of possible COCOM violations, which are currently only a small fraction of American efforts as described in the accompanying study, and could lead to greater understanding of international economic competition.

Our government has recently invested $100 million in the SEMATECH venture, in recognition of the deep need of the American electronics industry to remain competitive. And yet there is no comprehensive vehicle for understanding what prior and existing American technologies have become available to foreign persons through direct investment in United States enterprises. Knowing that a foreign corporation owned or controlled vital super-fast semiconductor technologies of tomorrow could focus the government's important research objectives. Knowledge of our competitors' assets is, on a national level, a first step in regaining competitiveness. Historically, especially in electronics, many of our foreign competitors' advances evolved from American-designed technology acquired by a foreign company.

The above suggests how compiled information might aid America and its economy. Yet, I must leave to my government how it would apply the relevant information, in the sincere hope and belief that another incident such as the Seiko manipulation of Micro Power could be avoided, in the national interest. I have begun a new company in California called Linear Integrated Systems, dedicated to developing different and equally or more advanced technology than at Micro Power. Ironically, the company's majority investors are French, and there exists no mechanism to determine whether my new investors have a significant relationship with my Japanese adversaries in the litigation. The interests of our country in both my existing and developmental technologies would be well served by public disclosure of foreign investment and foreign affiliations.

The CHAIRMAN. Thank you. It will be included in the record.

Then let me ask you this, Mr. Secretary. Now, all of this investment looks good on the face of it, and while we do not have the information, I am not sure what I am thinking.

One particular provision that we are struggling with at the moment deals with the trade bill, the exporter sales price offset, whereby your Department of Commerce in a dumping case—I notice you smile.

Mr. TROWBRIDGE. That was a long time ago, Mr. Senator.

The CHAIRMAN. It allows the affiliate, let us say from Japan, that would come in and take over that market. In other words, you can locate an affiliate and try to define whether or not they are dumping.

It is not just the price back in Japan compared to the price here, of course deducting the cost of freight and insurance, but also under the Department of Commerce administering that particular law you allow the sales price offset to include the promotion in the sales cost, which is, incidentally, not allowed in the European economic community or in Japan.

So we are getting all these foreign affiliates coming, and certainly they are individual companies, and 90 percent of those coming in are that; of 22,000, let us say 20,000.

I am beginning to wonder whether this is going to be a wonderful thing in creating jobs or, rather, constituting market takeover, because they can come in and take that part of the market and everything else, and momentarily that looks like an instrument of good; but then down the road they, of course, come in after they have captured that portion of the market. The price goes back up.

You and I know the old stories of ginghams and velvetines, and I can right on down in the textile part of it because they have gone out of business. We have seen this operation before.

Do we get the information so that we can look at those 20,000 individual foreign investors in the United States to determine

whether they are really engaged in the ordinary manufacture and the ordinary production and participation in our system here, or is it just an instrumentality for the market takeover in the way we administer our antidumping laws?

Mr. TROWBRIDGE. Mr. Chairman, I think your reference to the trade bill's inclusion of provisions on antidumping laws and antisubsidy and other provisions are currently under negotiation as part of the conference and will be hammered out by the Congress.

I am not sure whether or not that issue and the issue of reporting of this kind are absolutely simultaneous or bound together.

It does seem to me that the foreign investor, once he decides to move from a manfacturing at home to exporting to the U.S.—to a posture of direct investment in the U.S.—must operate under our laws and our environmental regulations, our labor laws, our antitrust laws, all of the things which our competitors have to deal with. If that foreign investor is in the same pool and has to swim in that series of regulations, then we have a little more level playing field.

The CHAIRMAN. Right, and you can understand my frustration. I do not know, and as a Senator I cannot find out.

How can I find out whether they are just capturing market share or they, as you say, are responding to the environmental laws, the labor laws and all the other regulations and participating on a level playing field?

Mr. TROWBRIDGE. Once they build their plant and they are in operation, they are subject to the same kind of OSHA inspection and other reporting and regulatory obligations that American competitors have.

The CHAIRMAN. But that investment in plant manufacture follows that dumping violation, which I call a violation but technically not unless we can change it. That follows on having captured the market share, and then it is more economical, of course, to build a plant and take over the business that you have captured and put everybody else out of business.

It is a wonderful development. The Japanese now have 25 percent of the financial holdings in the world, and they have money going to bat, and we are the rich market. I am not really worried about chilling them. If you could tell me how to chill them, I would do it.

I am worried about sustaining my economy and my economic strength and my manufacturing capacity, and you can see my frustration. I cannot find out.

Mr. TROWBRIDGE. Mr. Cooney may have a point.

Mr. COONEY. Mr. Chairman, if I may address this statistical point. I think the Commerce Department data does allow you to look at the sales by industry of foreign investors and also the net imports and exports from foreign affiliates by different kinds of affiliates.

We have been able to track that over the past few years. We have been watching that number fairly closely. It is mentioned in the article that is attached to the testimony and within the charts.

So I think the answer to the technical question is yes, there is sufficient aggregate statistics available to follow that trend to see if

it is a hollowing out trend or if it is a real manufacturing investment.

The CHAIRMAN. Very good. If there is any additional evidence you folks would like to submit, we would be glad to receive it.

There are some questions from some of the members of the committee which we will submit to you in writing.

We thank all three of you for your appearance here today.

The committee will be in recess.

[Whereupon, at 12:30 p.m., the committee recessed, subject to the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF JAMES POWELL

Thank you, Mr. Chairman and distinguished members of the Committee. I appreciate the opportunity to share my views here. I will submit a full statement for the record and summarize it now.

A word of introduction: I've recently finished analyzing the impact of foreign lending and investment, especially Japanese. My book, called GNOMES OF TOKYO, will be published by Dodd, Mead in May.

I've written more than 200 articles for the New York Times, Barron's, Esquire, the Christian Science Monitor, Money and a couple dozen other publications. I graduated from the University of Chicago with honors in economic history.

America became the most prosperous and powerful nation on earth by giving people the vital freedom to choose.

We've attracted countless foreign entrepreneurs who created jobs and prosperity in America. Just think of the great enterprises of John Jacob Astor, Alexander Graham Bell, Adolphus Busch, Andrew Carnegie, William Colgate, Samuel Goldwyn and Helena Rubinstein. I was fortunate to interview Italian-born Anthony Rossi, who built Tropicana, a billion dollar company employing 3,400 people in Florida.

For as long as anyone can remember, Americans have benefited from foreign investment. During the 19th century, low-cost British capital helped finance construction of our railroads, and before long we were exporting locomotives to Europe.

The Bank of Tokyo opened its first U.S. office way back in 1886. Now the Bank of Tokyo employs about 5,000 Americans.

In 1900, Swiss-owned Nestle began its U.S. operations with a condensed milk plant near Syracuse, New York. Nestle employs 5,000 Americans now.

Dutch-owned Shell Oil began refining petroleum products in Wood River, Illinois in 1918. Shell employes 33,000 Americans today.

Honda, in Marysville, Ohio, not only employes 5,700 Americans—they're actually exporting cars and motorcycles from America to Canada, Mexico, Europe, Australia, Taiwan and—yes, Honda America is also exporting cars to Japan.

While creating 3 million jobs, foreign investors give us more benefits. They help energize American communities where they locate.

Often foreign investors have introduced substantially better management practices: more attention to employee needs, more flexible organization, higher productivity—therefore greater real job security.

And of course, the renewed emphasis on quality owes much to intensified foreign competition for American customers.

The bottom line is that foreign investors benefits Americans just as IBM, Coca-Cola, Hilton, Levi Strauss, Walt Disney and other American companies have benefited people around the world for decades.

Moreover, America gains from lower-cost capital, wherever it comes from. We didn't become the most prosperous nation on earth by paying $500 for 60¢ light bulbs, as the Pentagon has done on occasion.

Freedom to choose lower-cost capital is crucial, because a company commonly needs between $75,000 and $150,000 of assets to create a new job. The most capital intensive industries need as much as $770,000 per job. The more capital that's available for investment in America, the more American jobs there can be.

In this decade, Japan and Western Europe have exported huge volumes of captial, while the United States has imported capital. As you know, we have created 2½ times more jobs than Japan and Western Europe combined.

When the volume of capital increases faster than our work force, wages and salaries go up faster, as employers compete for workers to operate new word processors, factory machines and other productive tools.

What about the fear that we're mostly generating minimum-wage jobs flipping hamburgers? It's a myth. The Bureau of Labor Statistics reports that more and more people are taking entry-level jobs in higher-paying occupations which offer

great potential for upward mobility. Jobs are being created fastest in the top third of the wage scale.

So more capital means more American jobs and better-paying jobs, regardless where the capital comes from.

Hundreds of major American companies become more competitive by using lower-cost funds from foreign lenders and investors. For instance, American Airlines, Chrysler, Dow Chemical, Ford, Eastman Kodak, General Electric, General Motors, GTE, IBM, Macy's, Marriott, Mobil, Northeast Utilities, Pepsico, Sears and United Technologies.

All these are sophisticated companies which have many choices. U.S. lenders solicit their business everyday. Yet often the lowest-cost deal is from a foreign lender. So it isn't true that we're becoming dependent on foreign capital. We could use more expensive sources of capital, but why pay more than you have to for anything? It's un-American.

Because lower-cost capital is available, American companies realize huge savings. For example, when a company wants to finance a factory, office building or other real estate project, Japanese banks offer more flexible terms and lower rates, so their loans can be 30% to 50% less expensive.

In a single transaction with Mitsubishi Trust & Banking, IBM will save an estimated $9 million on the cost of building a new Southbury, Connecticut office facility. It will employ about 3,000 Americans.

During the past five years, Japanese securities firms have managed $13 billion of Euromarket financings for American companies, further lowering their cost of capital. Revlon, Merrill Lynch, Texas Instruments, Digital Equipment and others have saved hundreds of millions in the Euromarket.

Foreign lenders don't just serve major American companies. Thousands of middle market and smaller American businesses benefit, too.

For example, Chicago-based Sanwa Business Credit Corporation has loaned $1.2 billion to about 1,100 American manufacturers who produce circuit boards, auto parts, machines tools, textiles, chemicals, toys and tires, plus companies which sell computers, peripheral equipment, and medical equipment to some 18,000 American customers.

Access to equity capital is more important than ever. During the past decade, interest payments have become a bigger expense for U.S. corporations, and now they're equal to about half of U.S. corporate profits.

During 1987, Japanese investors bought an estimated $17 billion of U.S. equities, up from $7 billion in 1986. Without foreign participation in U.S. equity markets, the cost of capital would increase.

To take advantage of low-cost foreign capital, more and more American companies solicit funds abroad. Among them: American Express, Anheuser Busch, Bell Atlantic, Chrysler, Citicorp, Du Pont, Exxon, First Chicago, General Motors, IBM, Kraft, The Limited, McDonald's, Merrill Lynch, J.P. Morgan, Proctor & Gamble and Walt Disney Productions.

All these American companies—which are free to choose among many financing alternatives—believe it's in their interest to tap lower-cost equity capital in Japan. They are among the American companies now listed on the Tokyo Stock Exchange.

Despite all these American jobs and other benefits, some people pursue a xenophobic campaign against foreign lending and investment. But nobody demonstrates any dangers. Where's the beef?

To begin with, foreign direct investment accounts for only about 5% of total U.S. assets. That's all, about 5%. It's sounds like McCarthyite or John Birch Society conspiracy theories to insinuate that American is being taken over by yellow hordes armed with Honda cars, Lifebuoy soap, Bic pens and Nestle chocolate bars.

The fear campaign against foreign investment is based on the myth that American entrepreneurs are giving away valuable assets. Did William Paley and Lawrence Tisch give away CBS records for nothing? Obviously, not. They got $2 billion out of Sony! If Mr. Paley and Mr. Tisch actually lost track of that $2 billion, CBS shareholders certainly should be notified.

Every time a foreign investor buys something, Americans get money. We Americans do better at investing our money than just about anyone else in the world, because our markets are open, and money management is an entrepreneurial business we excel at. Foreign investors express their confidence in American management by buying American stocks.

It doesn't make any difference in a competitive marketplace whether a business owner is Jewish, Japanese, English or anything else.

American consumers, employees and suppliers are protected by the availability of alternatives in competitive markets. Consumers are always free to buy elsewhere.

Employees are free to switch jobs if they're not paid enough or treated well. Suppliers can stop shipping if a company, foreign or domestic, doesn't pay its bills promptly.

American commercial and residential tenants are free to choose among alternatives, too. They will move if a landlord charges too much rent or doesn't provide adequate building services.

And of course, foreign investors are generally subject to the same laws as U.S. companies. Consumers, employees, suppliers and tenants can seek remedies from courts or regulatory agencies against everyone doing business here.

In any case, there isn't a shred of evidence that U.S. and foreign investors are fundamentally different. We all seek safe places to invest our savings for the best returns.

Like American investors, foreign investors favor low taxes, low inflation, low crime, predictable laws and good education—the kinds of things which foster prosperity and jobs all around.

Proposed restrictions on capital markets would be laughable if they weren't so dangerous. Restrictions will threaten American strength and security 5 ways.

First, any such restrictions will handicap American companies and give important competitive advantages to other countries—jeopardizing American jobs.

American high technology companies will be especially hurt, because they need so much capital for research & development. They need all the capital they can get to build tomorrow's technology.

Second, restricting foreigners from bidding on U.S. companies will lower the value of U.S. companies, making it more difficult for them to finance expansion and create jobs.

When the government pressured Fujitsu to withdraw its offer for Fairchild, it was picked up by National Semiconductor for $122 million, or half what Fujitsu has offered. As a result, Fairchild has a much harder time raising funds which it needs to turn around its red-ink operations. Whatever the national security concerns, it's hard to see how they would have been any different, since Fairchild was owned by Schlumberger, the oil services company based in Mitterand's France.

If CBS were restricted from dealing with a foreign bidder when it sold CBS Records, the company would have been denied $2 billion for future projects, because there wasn't any American bidder for the property.

Similarly, if Firestone were restricted from dealing with foreign investors, its stockholders would have been denied $2.6 billion to redeploy as they wish, because the only major bidders were from overseas.

In these cases and many others, reducing the value of American companies by excluding potential foreign bidders—would do more damage than the October 1987 stock market crash.

Third, restrictions on foreign capital will undermine the primacy of U.S. capital markets. Business and jobs will be transferred from New York to London and Tokyo.

Recall how the United States imposed taxes and restrictions against foreign investors during the 1960s. Funds flowed to Europe, and the fledgling Euromarket took off like a shot. It's a $650 billion market now.

Frankfurt lost its chance to become Europe's financial capital, because they retained many restrictions in their capital markets. Money flowed to Britain, a smaller country which had the good sense to keep hands off London financial markets. And so London is the undisputed king of European finance.

Tokyo has emerged as a global financial center only since Japan began deregulating its financial markets in 1980. Now there are more non-Japanese companies listed on the Tokyo Stock Exchange than non-U.S. companies on the New York Stock Exchange.

Fourth, restrictions against foreign capital can easily encourage foreign governments to retaliate with new restrictions against the estimated $900 billion of U.S. international investments.

Who knows what mischief foreign governments may devise. Reprisals could develop into devasting economic wars such as those which helped trigger the Great Depression, when more than 60 foreign governments retaliated against the Smoot-Hawley tariff within 2 years after President Hoover signed it—and our imports, exports and gross national product plunged more than 50%.

Fifth, restrictions against foreign capital will threaten our international alliances.

Japan bashing may be popular now, but Margaret Thatcher's Britain is the biggest foreign investor in America, with $43 billion of U.S. properties.

Next come the Dutch with $37 billion.

In third place are the Japanese with $19 billion.

Then Canada with $17 billion.

Other major foreign investors include West Germany, France, Switzerland, Sweden and Latin America. All of these are friends and allies.

In a dangerous world, it surely makes sense for us to strengthen our alliances, not spite our friends.

Just because some smaller, less successful countries restrict, even ban foreign lending and investment—isn't a good reason for us to follow their bad example. There are lots of things other countries do which wouldn't be right for America.

Blessed with a competitive business climate, Americans have gained more than $1 trillion from foreign investors in this decade. An estimated 65% of that $1 trillion is in the private sector where it can be invested productively and create more jobs for the future.

By keeping our capital markets open, we will make America richer and stronger, and we will control our destiny.

Thank you.

I welcome any questions you may have.

STATEMENT OF CADWALADER, WICKERSHAM & TAFT

The Foreign Investment Disclosure Act of 1987 (S. 1697) and Section 703 ("Registration of Foreign-Held Interests in United States Property") of the House-passed Trade and International Economic Policy Reform Act of 1987 (H.R. 3) would establish special new procedures for the registration of foreign investment in the United States.

Both S. 1697 and Section 703 should be rejected because they unfairly discriminate against foreign investors, would be harmful to the national economy, and are unnecessary. The registration procedures of these provisions would impose burdensome and costly disclosure requirements on foreign investors only. Further, the provisions are vague and ambiguous, and they mandate the public disclosure of sensitive business information. Accordingly, such registration would have a chilling effect on foreign investments, which, in light of Black Monday, October 19, 1987, would further reduce the availability of capital and adversely affect the economic growth and development of the country. Finally, S. 1697 and Section 703 are unnecessary because they would not improve the existing system of collecting data about foreign investment in the United States.

OPPOSITION TO REGISTRATION OF FOREIGN-HELD INTERESTS IN U.S. PROPERTY

Introduction

Section 2 of the Foreign Investment Disclosure Act of 1987 (S. 1697) requires foreign investors to disclose and register certain investments. The Trade and International Economic Policy Reform Act of 1987 (H.R. 3), as passed by the U.S. House of Representatives, contains similar registration requirements in Section 703. Generally, these provisions require foreign investors to register their equity holdings in the United States with the Commerce Department if their level of investment reaches a specified threshold level. These provisions should be rejected because they are unfair to foreign investors, harmful to the economy, and unnecessary.

The provisions are unfair and will discourage foreign investment

The disclosure provisions of S. 1697 and Section 703 are unfair to foreign investors and will discourage future foreign investment. Moreover, foreign investors will shift current foreign investment from equity investments to debt investments,[1] and will withdraw some investment from the United States altogether. The resultant reduction of foreign capital in the United States will harm the economy and result in many lost jobs.

[1] S. 1697 and Section 703 require registration of equity interests, but not of debt interests. Thus, foreign investors will shift their equity investments to debt instruments because debt will look more attractive to them than it really is.

A. Ambiguous and Vague Provisions

One of the primary reasons that these provisions are unfair is because they are vague. Foreign investors will not know whether they must register or not. Coupled with the severe penalties for noncompliance,[2] this vagueness will cause many foreign investors to invest elsewhere.

The most troublesome ambiguity is: "Who must register?" S. 1697 and Section 703 provide that the "ultimate beneficial owner" must register, but they do define that term. For example, in the case of a trust, is the ultimate beneficial owner the trust, the settlor, the trustee, or the beneficiaries? [3]

Another ambiguity is the provisions' definitions of "group". Section 2(m)(5) of S. 1697 and Section 703(m)(5) provide that two or more persons acting as a group for the purpose of investing in the United States will be considered a foreign investor if the group is 25% foreign owned. Does this definition encompass pension and investment funds? If so, a holder of an interest in such a fund, no matter how small his interest (e.g., $0.01), might have to register, and such funds would quickly stop investing in the United States.

B. Lack of Confidentiality

The registration provisions of S. 1697 and Section 703 make reported information a matter of public record. This lack of confidentiality will prejudice foreign businesses because they will have to disclose confidential financial information that could give a commercial advantage to their competitors. Privately-owned American competitors, however, will not have to disclose such information. This is another example of harmful discrimination against foreign investors.

The lack of confidentiality will also provide terrorist organizations with information necessary to pick targets, both in the United States and abroad, against foreign investors and their countries.

C. The Requirements Are Onerous and Costly

The registration provisions of S. 1697 and Section 703 also impose costly disclosure requirements on foreign persons who own a "controlling interest"[4] in a United States business. The most onerous of these requires audited financial statements prepared in accordance with generally accepted accounting principles. Many foreign businesses employ different accounting procedures than those used in the United States. Thus, they will either have to translate their accounting records or keep a separate set of records. Moreover, the disclosure provision will require that foreign-owned businesses spend considerable sums of money to have their reports audited.

These requirements are extremely unfair. Foreign-owned private businesses will have to spend large sums of money to prepare audited financial statements while American-owned businesses will not. This is a form of protectionism that will further deter foreign investment.

D. The Thresholds Are Very Low

The S. 1697 and Section 703 thresholds are very low. One of the most noted thresholds is a five-percent interest in a business with assets in excess of $5,000,000. This threshold could be as low as $250,000 ($5,000,000 × 5%). Thus, for example, a foreign person who owns an apartment worth $250,000 in a cooperative may have to register. With thresholds this low, an enormous number of investors will have to register. The low thresholds will result in information overload, will increase the number of foreign investors deterred from investing in the United States, and will not significantly serve any valid purposes.

The provisions are unnecessary

The registration provisions are unnecessary because sufficient information on foreign investment in the United States already exists.

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[2] Foreign investors who do not register are subject to fines of $10,000 per week.

[3] Or, for example, in the case of a corporation, is the ultimate beneficial owner the corporation or its stockholders, and if the stockholders, how should shares held in trust be treated?

[4] Defined as an equity or ownership interest in excess of 25% of a U.S. business that has assets or sales in excess of $20,000,000.

A. Present Collection of Information by Government Agencies

Currently, the Commerce Department,[5] the Treasury Department,[6] the Agriculture Department,[7] and the Securities and Exchange Commission [8] collect information regarding foreign investment in the United States.[9] This information is sufficient to determine the extent and effects of foreign investment. Any additional information that the disclosure provisions seek to gain is simply unnecessary.

B. Evasion of the Disclosure Requirements by Criminal Elements

Some supporters of the provision claim that it will help track and deter investments financed by illegal activities, such as proceeds from drug trafficking. Persons engaged in such activities cannot, however, be expected to comply with the disclosure requirements. Moreover, enforcement will be very difficult, especially in countries that will not assist the United States.[10]

Conclusion

The costs of the proposed registration provisions of S. 1697 and Section 703 far outweigh their benefits. The provisions are unfair, will discourage foreign capital, and are unnecessary. Furthermore, they will require a large and costly bureaucracy to administer, monitor, and enforce them. Thus, the provisions should be rejected.

STATEMENT OF SEIKO INSTRUMENTS, INC. AND SEIKO EPSON CORP.

We appreciate this opportunity to respond to the allegations made by Mr. John H. Hall in his testimony before this Committee on March 24, 1988. As you know, Mr. Hall was President of Micro Power Systems, Inc., (MPS), a California corporation organized in 1971 by Mr. Hall and the predecessors of Seiko Instruments, Inc. and Seiko Epson Corporation (hereinafter "Seiko"). Seiko has been the majority shareholder and major source of funding of MPS throughout that company's existence.

In June 1986, the MPS Board, having lost confidence in Mr. Hall, relieved him of his responsibilities as Chief Executive Officer. For more than a year now, Mr. Hall has been pursuing litigation in the California courts challenging that dismissal. Judging from the focus of his recent testimony before your Committee, one easily could conclude that it was more an effort by Mr. Hall to use the Congress as forum to further his litigation than an opportunity to affect the course of public policy.

The allegations made by Mr. Hall against Seiko and MPS are baseless and without merit.

Mr. Hall's principal allegation is that, since his departure from MPS, MPS has transferred to Seiko and Seiko, in turn, *may have* transferred to the People's Republic of China (PRC) semiconductor technology which has sensitive military application. *We categorically assure the Committee that no Seiko company ever has transferred any such alleged MPS semiconductor technology to the PRC.*

Moreover, all of the technology that MPS has transferred to Seiko is contrary to Mr. Hall's allegation, general process technology and general manufacturing know-how which, in accordance with the Export Administration Act of 1979, as amended, does not even require the issuance of an individual validated license by the Commerce Department. Such technology can be and has been transferred by "General License".

Mr. Hall further alleges that Seiko has transferred all of MPS's production from Santa Clara, California to Japan. This simply is not true. Contrary to Mr. Hall's testimony, MPS clearly remains as a domestic manufacturing facility. A vast majority of MPS' products continue to be fabricated in Santa Clara. California.

Seiko and MPS always have conducted themselves as responsible corporate citizens in this country, following a policy of complying both with the letter and the spirit of United States law. Seiko and MPS are pleased to cooperate with this Committee and to furnish any additional information the Committee desires.

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[5] The Commerce Department collects information regarding foreign direct investment, pursuant to The International Investment and Trade in Services Survey Act, 22 U.S.C. §§ 3101–3108.

[6] The Treasury Department collects information regarding foreign portfolio investment, also pursuant to The International Investment and Trade in Services Survey Act.

[7] The Agriculture Department collects information regarding ownership of agricultural and timber land by foreign persons, pursuant to the Agricultural Foreign Disclosure Act of 1978.

[8] Under SEC requirements, all beneficial owners of more than five percent of stock in a registered company must file a detailed annual report.

[9] In addition to these agencies, the Committee on Foreign Investment in the United States, established by Executive Order 11858, monitors United States policy toward foreign investment.

[10] For example, a drug trafficker could register his United States holdings in the names of a number of people who do not actually exist. The United States would encounter much difficulty in exposing such a fraud for several reasons, including a lack of information (names, ages, addresses, etc.) about people living in foreign countries.

STATEMENT OF HON. JAMES A. BAKER, III, SECRETARY, DEPARTMENT OF THE TREASURY

Mr. Chairman and distinguished members of the Committee, I would like to thank you for giving me the opportunity to provide my general views on the subject of foreign investment in the United States.

I would like to summarize my views by making ten points:

(1) In this field, views range from protectionist to market-oriented. I strongly prefer the market-oriented perspective -- not as a matter of rigid ideology, but rather as a matter of practicality. Market-oriented regimes provide the best environment for promoting and regulating international investment flows, both at home and abroad. This orientation is consistent with both our economic interest and our national interest.

(2) Open capital markets, inviting investment, have been our economic trump card for over 200 years. These open markets have played a key role in U.S. growth and development by providing a valuable supplementary source of savings. Foreign capital was important for the great industrial ventures of the 19th century -- and will be just as key for the technological advances of the 21st century. At no time has this foreign investment involved a loss of independence, either political or economic.

(3) The principal benefits that follow from freer investment flows are straightforward. Foreign investment:

- o Creates jobs for Americans;
- o Keeps interest rates lower than would otherwise be the case;
- o Helps transfer technology to the U.S., giving us an edge in building industries for the future; and
- o Helps expand U.S. access to foreign markets by giving us the chance to exploit -- through subsidiaries in the U.S. -- the business ties of parent companies based in other countries.

Both technology from abroad and expanded market access are highly desirable in a world where the U.S. is striving to maintain its competitive edge.

(4) Internationally, the U.S. itself is a major foreign investor with more to gain than to lose from freer investment regimes. The international economy is not a zero-sum game: Both the global economy and the domestic economy stand to benefit from the growth effects of freer, more efficient capital allocation. In our efforts with developing debtor nations, we have emphasized again and again the many merits of an open investment policy that creates an hospitable environment for foreign capital. A retreat from this position at home would severely undercut our efforts abroad.

(5) It is for these reasons that U.S. national policy has consistently sought to liberalize foreign investment regimes. We are pushing for such liberalization through the OECD and through pursuit of the U.S.-Canada Free Trade Agreement, bilateral negotiations with Mexico and other middle-income debtor nations, and multilateral negotiations in the context of the GATT.

(6) It is, of course, not the case that the U.S. itself has a completely free foreign investment regime -- although our regime is relatively free. We reserve certain sectors as off-limits to foreigners for national security reasons. Also, we have legal and administrative authorities through which we can further protect our national interest and preserve competition. These measures include:

- o Export control laws to protect sensitive technology;
- o The defense industrial security program to protect classified technology, research, and production;
- o Individual statutes to restrict foreign ownership of specific industries for national security reasons (e.g., nuclear energy, communications);
- o The Defense Production Act to assure domestic production of needed goods;
- o The Committee on Foreign Investment in the United States (CFIUS) to provide an opportunity for critical interagency appraisal of suspect transactions that may have adverse implications for the United States;
- o The Hart-Scott-Rodino review process and other anti-trust laws to deal with potentially anti-competitive mergers and acquisitions; and
- o In extreme cases, the International Emergency Economic Powers Act to prevent, via Presidential action, foreign action that would threaten U.S. interests.

These authorities have been used in a way that places the burden of proof on those who would wish to thwart a financial transaction, rather than the other way around. That is, the underlying presumption is that foreign investment is ordinarily a good thing. I would think it highly undesirable to reverse that presumption. Our laws have served us well. I see no need for additional legislative authority in this area.

(7) We also collect data that are used to evaluate the implications of investment for U.S. employment and foreign trade. Comprehensive, systematic, updated, ongoing foreign investment data are obtained for statistical estimates of international transactions, U.S. assets abroad, and foreign assets in the United States; additional information is collected to gauge the economic implications of direct investments. All this information is published in a form that protects the confidentiality of individual foreign investors or U.S. companies. Published figures indicate the size and country of the investor, as well as the industry sector of foreign direct investment.

Published data are compiled from:

-- Quarterly data reported to the Commerce Department by foreign-owned U.S. enterprises that cover individual foreign direct investments above a de minimis level if foreign voting equity ownership is 10 percent or more.

-- Monthly or quarterly data reported to the Treasury Department by financial intermediaries that cover foreign portfolio investment transactions aggregated by country and type of investor in U.S. equities, bonds and other instruments, and foreign funds held with banks.

Additional information on foreign investment is collected through Agriculture Department surveys of foreign purchases of land and Commerce Department compilations of publicly available information for individual foreign direct investments.

Furthermore, domestic and foreign purchases exceeding five percent of the outstanding shares of a publicly traded company must be reported to the Securities and Exchange Commission, which publishes specific investments and investors.

We have surveyed the practices of the G-7 countries (United States, Japan, Germany, the United Kingdom, Canada, Italy, and France) on foreign investment. Our findings are that <u>not one</u> of the G-7 countries has a publicly available national register of foreign investments of the type prescribed by Bryant; <u>not one</u>

discloses to the public ongoing information about the status of specific foreign investors and their investments; not one requires systematic reporting by foreign investors or domestic firms for this purpose. Indeed, the OECD -- whose function includes maintaining information on international reporting requirements and impediments to international investments -- advises that no OECD member country has a publicly available national register of foreign investments of the type prescribed by Bryant.

In my view, compiling, registering, and disclosing to the public additional information for specific investments serves no beneficial purpose, and would very likely drive foreign investment away.

(8) I know that some of the concern about foreign direct investment is related to concern about the U.S. as an international debtor. Unfortunately, much of the popular analysis of this issue has been off the mark. The indicators to focus on are not those related to absolute levels of obligations to foreigners; rather, they are those related to the U.S. capacity for future debt service.

From this standpoint, sound investment in additional future productive capacity (as opposed to current consumption) should be viewed as beneficial. If the goal is increased investment in productive capacity -- with a larger share of this investment from domestic sources -- then policies should concentrate on increasing the domestic savings rate, not arbitrarily limiting foreign investment. Regardless of one's views on the savings/investment allocation in the United States, or on the best way to reduce the budget deficit, it won't help to choke off investment by scaring away foreign capital.

(9) There is, in my opinion, no policy logic to discrimination that is prejudiced against investment whose origin is foreign. We live in an interdependent world. Discouraging foreign investment by making it unwelcome -- in fact or in appearance -- hurts us at home and makes us vulnerable to retaliatory action abroad. Being pro-American -- wanting our nation to be safe and our economy strong -- doesn't mean being anti-foreign.

(10) Not too long ago, financial privacy was a subject of great concern. This concern prompted a number of governmental responses, including the Privacy Act of 1974, the major report Personal Privacy in an Information Society, and the Bank Secrecy Act (focusing on third party records). Congress also enacted special protections for IRS records. The concern for appropriate safeguards for financial privacy is still valid today: to promote a well-functioning marketplace, investors need to be able to maintain records that are not open to public scrutiny. This is true whether the investors are from the U.S. or abroad.

The Bryant provision (Section 703 of the House bill) proposes to register and publicly disclose specific foreign investments of a certain size, whether direct or portfolio investment. Both privately held and publicly traded companies would be subject to the rules, and civil and criminal penalities could be imposed.

If enacted, the Bryant provision would have a chilling effect on foreign investment in the United States -- thereby costing jobs, raising interest rates, lowering productivity, closing off opportunities for technological and managerial improvements, and undermining our efforts to liberalize investments abroad.

The provision would also undermine our international negotiating positions and strategy -- at a time when we have already made significant progress in moving much of the world in more open, market-oriented directions.

Finally, the provision would discourage investment -- at a time when we have a special need for it. I strongly urge the proponents of this provision to consider long and hard the risk of higher interest rates that they are inviting. Homebuyers, small businesspersons, young families buying on credit, farmers -- and many others -- may find these higher rates a big cost to pay so that we can discriminate against foreigners who wish to invest in the United States.

We have long been the beneficiary of foreign investment. That experience -- and our need for an internationally competitive economy -- are the strongest arguments in favor of keeping the doors open, not closing them. For all these reasons, I strongly oppose the Bryant provision.

Questions from Senator Hollings to Secretary Baker

1. Does the Treasury still protect OPEC country investments?

Treasury does not release the portfolio investment holdings of individual oil-exporting countries in the Middle East and Africa in order to avoid disclosure of the holdings of individual official institutions, which in some of these countries continue to constitute a relatively high percentage of the holdings of all residents of those countries. Thus, these countries are grouped with several others to avoid disclosure of the holdings of individual investors. This conforms to the confidentiality provisions of the International Investment and Trade in Services Act of 1976 and the Bretton Woods Agreements Act, under which the foreign investment information is obtained and which protect the data against disclosure of information that would reveal the identity of any particular reporter or customer.

2. The 1987 benchmark survey, when will it be out? Why is the latest information available at the ITA 1986 transactions?

The 1987 benchmark survey was mailed out to respondents in late February, 1988. The BE-12(X) portion of the survey, which is used to determine reporting status and to claim exemption from reporting, is due within 30 days of receipt. The BE-12(LF), which is used by foreign-owned U.S. affiliates with assets, sales, or net income greater than $20 million, or the BE-12(SF), which is filed by U.S. affiliates with assets, sales, or net income between $1 million and $20 million, are due May 31, 1988. Initial results of the survey are expected to be released in mid-1989, and revised data will be published the following year.

The 1987 ITA transactions report is in process and will be available in late summer. All information on 1987 transactions was not available before mid-March, 1988. A few months are necessary to research the transactions, draft, edit, and reproduce the report.

3. Since passage of AFIDA in 1978 has foreign investment in farmland decreased due to legislation and disclosure provisions of the Act?

Foreign acquisition of U.S. farmland has not increased significantly since the enactment of AFIDA. As of December 31, 1987, foreign individuals and entities reported owning 5.6 million acres of farmland, a slight increase over a year earlier. The first table below shows the acreage owned by foreigners (defined in regulations as 10% or more foreign-owned). It shows that since 1981 (data for 1979 and 1980 are incomplete) that ownership of cropland, pasture, and other agricultural land has

been remarkably stable in terms of acreage owned. The adjusted value of foreign-owned farmland, timberland, and non-agricultural rural land was, at $9.1 billion, 8% higher in 1987 than in 1981. The 1987 figure is a decline from the levels reached in the mid-1980' (second table). In terms of value, farmland and timberland owned by foreigners are significantly lower in relation to the GNP in 1987 than it was at the beginning of the decade.

To put the numbers in perspective it should be recalled that the GNP grew by 17% in real and by 47% in nominal terms between 1981 and 1987 and the position of overall foreign direct investment in the United States grew from $90 billion in 1981 to roughly $250 billion in 1987. How much if any of the difference in trend between foreign ownership of farmland and ownership of other assets is due to the Act is conjectural, but the difference in trend is striking.

	Farmland			
	Cropland	Pasture	Other ag land	Total
		(millions of acres)		
1987	2.1	3.0	0.5	5.6
1986	2.1	2.7	0.5	5.3
1985	2.1	2.7	0.5	5.3
1984	2.0	2.8	0.6	5.4
1983	1.9	2.8	0.6	5.3
1982	1.8	3.0	0.6	5.4
1981	1.7	2.8	0.5	5.0

	Farmland and Timberland	
	(millions of acres)	($ billions, adjusted value)
1987	12.5	9.3
1986	12.3	9.7
1985	12.5	9.8
1984	14.0	12.1
1983	13.7	11.4
1982	13.5	10.9
1981	12.7	8.4

4. Have you addressed the criticisms found in the 87 findings and conclusions published by the House Government Operations Committee in 1980? If so, how many have been addressed by this Administration?

Yes, the 87 findings and conclusions were addressed. Treasury sent the files containing the report to the Washington national Records Center in 1986 as part of our file management program.

We have asked that the report be retrieved and will forward it to you when received.

The 1980 findings and conclusions raised a number of issues on which this Administration's views are well known. Among the major ones are:

Screening foreign direct investment and applying a benefits test to foreign direct investment.

> The Administration strongly believes that such a mechanism should not be instituted. It would require that bureaucrats second-guess the marketplace becoming involved in complex transactions. This is not the proper environment in which decisions regarding investment ought to be made. It would make the investment process less predictable and substantially increase the uncertainties of investing. The experience of Canada with such a system is instructive. Before the Mulroney Administration began to move away from such a system, Canada experienced a deep chill toward foreign investment and the jobs, technology,and revenue it could create.

Registration and disclosure of foreign direct investment in the United States.

> Such discriminatory treatment of foreign investors would discourage them from investing in the United States. It could not help but make capital more costly in the United States, affecting economic growth and new jobs.

Relaxation of rules on confidentiality of data on foreign direct investment.

> Confidentiality underlies all American data gathering systems and makes them among the best in the world. While reporting is mandatory, the quality of the information collected depends upon compliance and assurances of confidentiality. When businesses provide sensitive information they require confidentiality to protect themselves from official probes and to avoid revealing to competitors information concerning sales, finances, and industrial strategies. If we did not guarantee confidentiality we could not be sure that the information would be correctly reported, nor could we rely on analysis based on that information.

Data on foreign direct investment are inadequate.

> The Executive Branch relies on the published data from Commerce. It is adequate for the purpose of balance of payments analysis and to analysis and policy making on

foreign investment.

5. What assurance do you have that BEA is getting the correct nationality of the ultimate beneficial owner (UBO) of the 10% or more interest in a U.S. firm?

Unless BEA has reason to believe that the reported nationality is incorrect, it normally accepts the nationality of the UBO as reported by its U.S. affiliate. If BEA receives information indicating a nationality other than the one reported, it investigates. Similarly, if a reporter changes its UBO, BEA investigates to determine which UBO is correct. Finally, certain "countries of convenience," such as Panama, the Cayman Islands, and the Netherlands Antilles are not accepted as the correct nationality without BEA verification and contact with the reporter. BEA spends a great deal of effort on verifying UBOs during the review process.

6. What is the penalty for non-compliance with the reporting requirements of the International Investment Survey Act? Is this strong enough to deter, hypothetically, an agent of Ferdinand Marcos from filing a false report?

Under Section 6 of the International Investment and Trade in Services Act, whoever fails to report may be subject to a civil penalty of up to $10,000 and to injunctive relief commanding compliance. Whoever willfully fails to report shall be fined up to $10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation convicted of knowing violation of the Act may be punished by a like fine, imprisonment, or both.

BEA is legally prohibited from disclosing information concerning a specific investment, so the question of whether penalties are adequate cannot be answered with regard to a particular investment. BEA believes that the penalties are sufficient to deter an agent from filing a false report, and is not aware of any instance when they have not been sufficient.

7. How does BEA publicize its surveys to ensure compliance?

BEA staff constantly review major newspapers, trade journals, and company listings to identify potential respondents, to whom BEA then sends information concerning the reporting requirements. BEA also has access to information collected by the ITA's Office of Trade and Investment Analysis, which concentrates its resources on locating new foreign investment.

Notices of BEA surveys appear in the Federal Register. BEA also is making a special effort to publicize the benchmark survey by sending notices to the economic development offices of all 50

States and 5 territories to be distributed to their contacts. This notice was also sent to the overseas offices of the 28 states that maintain such offices to locate foreign investors for their States, and to major CPA and law firms and real estate organizations. BEA staff and the staff of the Agriculture Department's foreign investment in agricultural real estate program publicize each others' reporting requirements, and BEA also plans to alert Commerce Department's field offices concerning the survey.

8. Why does the Census Bureau refuse to share its business information with BEA? Are you aware that according to a 1978 legal memorandum prepared by the American Law Division of the Library of Congress the statute does not prohibit intra-agency data sharing?

BEA is aware of this Library of Congress opinion, but disagrees with the conclusion it reached. The Census Bureau is prohibited from any disclosure of its individually identifiable data to anyone who is not a sworn Census Bureau employee. The BEA may, however, provide information to the Census Bureau, which may then perform analysis necessary for policy making purposes without disclosing any individually identifiable information.

9. Do we know, on average, what percentage of profits made in the U.S. are repatriated to the home country?

BEA's Survey of Current Business indicates that in 1984 and 1987 slightly more than 50 percent of the earnings of U.S. affiliates was distributed to foreign parents. In 1985 and 1986, however, the amount distributed was greater than the earnings for the year.

The reason that U.S. affiliates paid out more than they earned in 1985 and 1986 is that profits in those years were relatively low. Firms generally maintain regular distributions to owners irrespective of fluctuations in profits, and in this case profits declined while distributions remained more constant.

10. Do we know on average what percentage of FDI is financed through inflows of capital and what percentage is financed in the U.S.?

BEA data indicate that for the period from 1983 through 1986, external funds from foreign parent groups (the foreign parent and foreign affiliates of the foreign parent) accounted for slightly less than 25 percent of U.S. affiliates' total sources of funds. The annual ratio varied between a low of 15 percent in 1985, to about 20 percent in 1983, to over 30 percent in both 1984 and 1986.

11. Has the Administration studied the effects of foreign investment on transfers of technology? If so, could you furnish the Committee a copy of your study?

Such a report does not exist at this time. The Administration recognizes that international direct investment often results in two-way technology transfers which can benefit both home and host countries by increasing employment and raising productivity.

12. The Administration strongly supports the lowering of investment barriers around the world, arguing for a "free market" approach. If the free flow of capital is what the Administration desires, are you at all concerned about the distortion caused by 50 states racing against each other to offer the most incentives to foreign investors?

We doubt that incentive programs are very effective in attracting investment and jobs to the United States. A study by the International Finance Corporation suggests that this competition merely shifts the location of production and jobs between states. As states compete for investment by providing incentives, the net result is that foreign investors gain and state treasuries lose.

We have told state officials this and suggested that it would be in the interest of the states to discipline the use of incentives, possibly through an agreement along the lines of the OECD Arrangement on Export Credits at the international level. We are not at that point yet. Our unsolicited advice to the states on curbing the use of incentives has been ignored. The main competitors in the incentives game are afraid to stop providing incentives so long as it is likely that their competitors will continue to provide them. Under our federalist system of government, the states are within their rights to ignore our advice on incentives.

13. You have said in testimony that additional information on foreign investment is not needed -- yet, academics doing work in this field have often criticized the data available as being sparse, incomplete and untimely. Any comment?

Collecting and publicizing information imposes substantial costs both on those reporting information and those processing it. The benefits to any group of analysts of expanding data collection in this field need to be weighed against these costs. BEA and Treasury currently collect a great deal of information on foreign investment and make it available to public and private users. They will be happy to discuss users' needs with them with a view to improving data collection efforts, in the most economic way possible.

14. You testified in 1986 that the "Overall employment impact of

foreign investment is uncertain. It probably has has a positive effect." Is this good enough information for policy purposes?

Foreign direct investment in the United States should be encouraged because it benefits the economy by providing new jobs, factories, income, exports, technologies and management techniques. Additionally, it contributes to manufacturing employment and strengthens local economies, and promotes economic growth by holding down interest rates.

By the end of 1985, non-bank U.S. affiliates of foreign firms:

-- employed almost 3 million Americans;
-- had payrolls in excess of $70 billion;
-- paid about $8 billion in U.S. income taxes (plus additional state, county and local taxes);
-- exported over $55 billion of merchandise;
-- held a foreign direct investment position in the U.S. of $185 billion, as opposed to U.S. foreign direct investment of $230 billion.

15. You also testified that FDI increases competition within individual industries. Is that true in the U.S. tire industry?

Yes, foreign direct investment has increased competition in the U.S. tire industry. A healthy environment in any industry depends upon firms having access to capital and equipment, and upon competition between firms to promote and reward efficiency. The source of the capital is irrelevant so long as investment in a technology or facility is economically justified.

The U.S. benefits from gaining new or improved productive assets, which contributes to efficiency and employment.

16. The 1980 Benchmark Survey was published in October, 1983. Will we have to wait three years for the 1987 Survey?

No. As a result of increased experience, more efficient editing procedures, and additional computer resources, BEA believes it can accelerate the processing schedule for the 1987 survey from about 2 years to 12 months. Preliminary results are scheduled for publication in mid-1989, and final results will be published a year later.

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JEROME W. SHAY
OF COUNSEL

March 24, 1988

The Honorable Ernest F. Hollings
United States Senate
SR-125 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Hollings:

During the testimony today of Mr. Robert Ortner, Undersecretary for Economic Affairs at the Department of Commerce, you asked the witness if he knew of any U.S. company that would go out of business if the Bryant Amendment were adopted. I believe the answer was that he knew of no such business of his own knowledge. I can give you one example of such a business.

My client, 3i, is an American company which has offices in both Boston, Massachusetts, and Newport Beach, California. It is a wholly-owned American subsidiary of a British company. It invests as a venture capitalist in private industry, sometimes as an early-round participant and sometimes at a very late stage in a company's life. Usually it invests with other venture capitalists, most of whom are domestic U.S. companies owned by American citizens or American companies. It does not seek to control any of the companies in which it invests.

If the Bryant Amendment were to pass, the information required under the amendment would be required not of 3i but of the companies in which 3i invests. In other words, private U.S. companies would be required to provide information which they normally would provide to no one, information extremely important to their competitors and of a type which they would not have to provide if 3i was an American-owned venture capital company.

In that setting, my client is convinced that two things will occur:

First, faced with the choice of an investment from 3i or an investment from a competing American company, the private U.S. company will sacrifice a certain amount of preferable terms, conditions, service, opportunities for technology transfer abroad, etc., that the 3i investment might provide, and instead

take the "nondisclosure" investment from the U.S. venture capitalist.

Second, syndications of venture capitalists (and venture capital is done in syndicate -- if you are not part of a syndicate, you will have a difficult time being successful as a venture capitalist) will not invite 3i to participate because the investee company will be reluctant to accept the investment of the "tainted" syndicate.

The end result fairly quickly would be the elimination of 3i as a U.S. company. Currently it has approximately 70 investments in the U.S. totalling approximately $60 million, most of which is in New England and California but some of which are in other parts of the United States. The 60 or so companies which have chosen 3i as an investor have done so because they believe 3i brought the best combination of financial terms, conditions, service, value-added expertise, etc. With 3i absent, they would have to accept an investment which they think is at least second best.

I have met with your staff and have discussed ways in which a company such as 3i can be protected under the Bryant Amendment without compromising the basic goal that you seek. If the amendment goes forward, I would hope that you would see fit to add the protection in the amendment.

Very truly yours,

Robert E. Barnett

Robert E. Barnett

BRITISH EMBASSY,
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FROM THE AMBASSADOR

15 March 1988

The Honorable
Ernest F Hollings
Room 125
Senate Russell Office Building
Washington DC 20515

Dear Senator Hollings,

I understand that conferees will shortly be considering Section 703 of the House Trade Bill, which would lay down registration requirements for foreign investment in the United States.

Britain and the United States are the largest sources of foreign direct investment in each other's markets. In 1986 total British holdings here were worth over $51 billion, while US firms had total holdings in Britain worth more than $34 billion (and accounted for more than twenty per cent of UK manufacturing output). Both totals are undoubtedly now very much higher.

Section 703 of the House Trade Bill would oblige foreign-owned companies - defined to include companies in which the foreign share is as low as 25% - to reveal detailed proprietary-information in a way which would put them at a real commercial disadvantage. The penalty for failure to register would include fines or imprisonment. The provision would apply both to companies which have been good employers in the United States for decades giving employment to many thousands of US citizens and those which wish to establish plants or invest in businesses here for the first time. It would discourage new investment from Britain.

What troubles the British government particularly is the burdensome and discriminatory nature of the requirements in Section 703. No such obligations are imposed on foreign investors in the United Kingdom. Indeed there is no mechanism at all in Britain for the systematic collection of information on foreign investment even though foreign-owned firms account for a very much higher share of British GNP. On the other hand, in the United States a number of Federal agencies are

/already

already specifically charged with monitoring it. It will be more difficult for the British government to resist such requirements in the United Kingdom and in the European Community if the United States - the major source of foreign direct investment in Europe - were to introduce them.

There is another relevant consideration which I should mention. The imposition of special registration requirements for firms with a foreign shareholding would run contrary to the United States' commitment to accord national treatment to foreign investors, and to the OECD Declaration and Decisions on International Investment and Multilateral Enterprises, to which the United States is a signatory. At a time when the United Kingdom and the United States are working together, bilaterally and in the Uruguay Round, to promote and improve protection for foreign direct investment worldwide, it would be particularly damaging if Congress were to adopt this provision. Both Britain and the United States share an interest in discouraging discrimination against their firms in third markets and in upholding international agreements.

For these reasons, I hope therefore that you and your colleagues will decide, on reflection, not to include S703 in the final version of the Trade Bill.

Yours sincerely

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From
John M M Banham
Director-General

CBI

18 March 1988

The Hon Ernest F Hollings
Chairman, Senate Commerce
Science & Transportation Committee
Room 508
Dirksen Senate Office Building
Washington DC 20510
USA

Dear Senator Hollings

Collection of information on foreign investment

I understand your committee will be addressing the above issue at a hearing scheduled for 24 March and I wanted to put on record, for the committee's consideration, the position of British industry.

I believe you may be aware of the key role the CBI has in articulating British business views: we are the leading business organisation in this country, representing over 250,000 companies from all sectors and of all sizes. A large number of those member companies are major investors in the USA and have much at stake in the issue under consideration.

Our position, briefly stated, is that we would view with concern the imposition of any additional reporting requirements on foreign investors in the US. I enclose a paper which sets out the reasons for our concern, and which highlights the value of the longstanding investment relationship between the US and the UK. You will note that we value very highly the contribution of American investment to this country's economy, and indeed we count among membership many of the leading American multinationals established here.

We would like to think that British investment in the US would be viewed in a like manner, as a positive factor, not as a threat.

I urge you to take the views expressed in the paper into consideration as you debate the issue with the Congressional colleagues.

Yours sincerely

J M M Banham

Collection of information on foreign investment

The US-UK Perspective

Purpose of this Paper

1 This paper seeks to outline the quality and depth of investment relations between the US and the UK, to assess the impact of foreign direct investment and to make the case for keeping the barriers open in this area.

Background

2 The US and the UK have a long history of exchanging goods, capital, technology and skills and, by and large, the relationship has been cooperative and mutually beneficial.

3 Three stages may be identified in this relationship: whilst the US was experiencing a period of rapid industrial development in the late 19th and early 20th century the economy was heavily reliant on imported capital (mainly from Britain); the tide turned after World War II, during which period the US dominated the investment relationship supplying its new technology and skills to a war-ravaged Europe; finally, in the last five years, the economic resurgence of Europe, the abolition of UK exchange controls, coupled with a recently weakened dollar, has led to a renewed interest, and as the table below shows, the UK is now once again a net foreign direct investor in the US:

Book value of net assets 1914-1986
($m)

	UK in US	US in UK	Net UK in US
1914	700	350	+350
1936	873	473	+400
1950	1168	847	-321
1960	2248	3194	-946
1970	2852	5123	-2271
1980	14105	28605	-14500
1986	51397	34990	+16407

Source: US Department of Commerce

Whilst the balance currently appears to favour the UK it is worth noting that figures for US direct investment abroad are considered by many observers to underestimate the position.

4 Apart from Canada, the UK takes the largest portion of US direct investment abroad and the US is our largest foreign investor; the UK has, since 1982, been the largest foreign investor in the US. Our economies are inextricably linked.

The Impact of Foreign Direct Investment (FDI)

5 In national macro-economic terms, investment, whether foreign or domestic, is generally expected in aggregate to increase national output, employment and living standards.

6 The benefits of FDI may be enumerated as follows:

- employment
- output
- technology transfer
- balance of payment
- supplier opportunities
- meeting of consumer needs.

7 Measuring the precise impact in these areas is a difficult matter, as much depends on the nature of the investment, its location, the quality of the competition in that area and many other factors.

8 In Britain, however, the positive impact on the economy may be gauged from the following statistics:

United Kingdom private sector manufacturing enterprises 1984

	US enterprises	All foreign enterprises	Total enterprises in UK
No of establishments	1,294	2602	134,148
Employment (000s)	446	716	4,827
Net output (£m)	11,214	17,120	84,321
Net capital expenditure (£m)	1,093	1,547	7,327

Source: Census of Production 1984

US firms, whilst representing less than 2% of manufactuing establishments in the UK, accounted for 14.8% of employment, 20.3% of net output and 21.1% of net capital expenditure. US firms therefore dominate the foreign sector in the UK, dwarfing even Japan and the FRG, who together in 1984 accounted for only 3% of net output. And

in 1986, of the 700 projects handled by the Invest in Britain Bureau, some 43% were of American origin. At the present time, 96 of Fortune's top 100 companies have operations in the UK and eight of the UK's top 50 companies are US controlled.

9 Ford UK is a classical example of the dominance of US investment in the UK. Established here since 1911, it announced, in 1986, plans to invest more than £1.5bn in Britain over five years. (This compares with Nissan's £600m investment, the largest by any Japanese company in Europe). It is today Britain's largest vehicle manufacturer, employing more capital than all the other volume producers put together. Some 45,000 people work directly for the company; dealers employ another 33,000 and suppliers a further 100,000. Taking Ford and General Motors together, these two American manufacturers together account for 50% of total British output, 42% of registrations, and 43% of employment in the British motor and component industry.

10 The example of Ford points up the indirect employment impact of FDI. Indirect employment is created by:

a) foreign firms purchasing supplies and services from the host economy;

b) directly employed staff purchasing goods and services.

11 Within the European manufacturing sector, a multiplier effect of 1:4 is not uncommon in respect of indirect employment as described in 10 a). Thus for every direct job created by a US investment, four are created in supplier industries. This constitutes a sizeable contribution to the host economy.

12 It is also worth noting here that American direct investment abroad (USDIA) benefits not only the host economy in the ways described above, but also the US companies concerned and the US economy at large. Companies recognise now that overseas investment is not an 'optional extra'; it must, rather, form an integral part of the business strategy, not only for reasons of asset diversification, but also in order to better meet the needs of the customers abroad. Growth in today's business climate can in many cases be best achieved by expanding overseas, and many US companies have been quick to learn this lesson. A survey by Business International in 1981 showed that of 104 firms surveyed, those with the most foreign investment increased their net domestic employment by 23%, and those with the least by only 7.5%.[1]

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1 "The Effects of US Corporate Foreign Investments 1970-79" Business International, New York, July 1981

In macro-economic terms, USDIA benefits the trade account, as US companies export goods to supply their affiliates abroad. Department of Commerce studies indicate that 50% of US exports go to American companies overseas.[2] Likewise, the earnings on foreign investments have been impressive, strongly benefitting the US balance of payments Between 1948 and 1985, US firms invested $80.5 billion abroad, but received back on those investments $353 billion, a net gain of $272.5 billion for the balance of payments.

13 In the US, the size and contribution of the foreign sector, whilst significant, is small in the context of the economy as a whole. Department of Commerce estimates for 1984 indicate that US affiliates of foreign corporations directly employed 2.7 million people. This is a significant contribution but only approximately 2% of total civilian employment in the US. FDI is thus a relatively small factor in the nation's overall economy. It is estimated that foreign interests currently own approximately 4-6% of the value of the assets in the US economy; significantly, this figure is not out of line with US investment in most other countries.

14 As regards the impact of FDI on the US economy, several conclusions reached by the Department of Commerce's 1976 Report to Congress "Foreign Direct Investment in the United States" are revealing:

- "Direct foreign investment provides jobs, and the employment practices of foreign-owned firms generally parallel those of US-owned companies .... US nationals were found to predominate in managerial positions".

- "Technology transfers associated with (foreign direct) investment are significant. In the area of product and process technology, the net balance appears to be into the US, but in the area of management innovation and marketing techniques, the net flow of technology appears to be outward".

15 Evidence of the positive impact of British investment in the USA is not hard to find. BAT, for instance, has over the last five years spent about US$ 1 billion in capital expenditure, $ 2bn in marketing and new products, half a billion in acquisitions, and about a third of a billion on R&D and new technologies. It employs over 40,000 people in the US.

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2 DOC Survey of Current Business - various issues, 1984

US and UK Policies Concerning Inward Investment

16 It is British government policy to welcome foreign investment; a unit of the Department of Trade and Industry, the Invest in Britain Bureau, was set up in 1977 to encourage and assist foreign investment in Britain.

17 Foreign investors in Britain are accorded full national treatment; no special reporting requirements are imposed on foreign corporations. Indeed, the very absence of up-to-date and reliable statistics on the size of the foreign sector is testimony to the open and non-discriminating climate which prevails in Britain.

18 The US, likewise, operates an open and unrestricted market for foreign investors. To quote again from the 1976 Report to Congress on FDI: "The major premise of US investment policy is that free market forces should determine the direction of capital flows throughout the world to maximise economic efficiency. Accordingly, the basic policy toward foreign investors in the US is one of national treatment, that is, to admit them freely and to treat them on the basis of equality with domestic investors in their US operations".

19 This is not to say that FDI is not a matter of public concern. In the pre-1914 period, British investment was seen as a threat to US economic sovereignty; in the 1970s OPEC surpluses were seen in a similar light; and the focus is currently on Japan. Likewise, in the years following the formation of the European Community, the surge in US investment gave rise to similar fears in Europe.

20 The policy response to this concern must not, however, be to pass legislation which is restrictive or burdensome to the foreign investor whilst leaving the domestic investor unaffected. Discriminatory treatment can only stifle the flow of economically productive funds and encourage tit-for-tat legislation in affected countries.

The Collection of Information on Foreign Investment

21 As stated, no mechanism exists in the UK for the systematic collection of information on foreign investment.

22 In the US, data is collected by several agencies, notably:

- the Bureau for Economic Analysis at the Department of Commerce;

- the Office of Trade and Investment Analysis at the Department of Commerce;

- the Department of Agriculture;

- the Securities and Exchange Council;

- the Federal Reserve Board.

Furthermore, the interagency Committee on Foreign Investment in the United State (CFIUS), established by Executive Order in 1975, is charged with monitoring the impact of foreign direct and portfolio investment in the US and with coordinating the implementation of US policy on this issue.

23 There can be no possible objection to the collection of information per se, but our concerns focus on:

a) the need for additional information;

b) the use to which this information could be put;

c) the question of national treatment.

24 British business is of the view that additional reporting requirements would constitute a significant administrative burden on operations in the US, diverting resources from more productive activity.

25 There is also a concern that certain information on activities, were it to reach the public domain, could prejudice the competitive position of foreign investors. In many cases, for instance, there will be a desire not to make public the price paid for an acquisition or investment.

26 Any reporting requirements imposed on a foreign investor and not on domestic US corporations is a violation of the principle of national treatment. The US has clearly stated its endorsement of this principle, and it is to be hoped that no legislation will be introduced which would undermine that position.

Conclusion

27 US investment in the UK is a longstanding phenomenon, and is both pervasive and welcome in the British economy.

28 Traffic has also flowed strongly in the opposite direction, particularly in recent years, and British investment has hitherto generally been made welcome in the US.

Indeed, the economic development authorities of most of the 50 states are active in the UK in seeking out potential investors for their localities.

29 To be competitive in today's global marketplace, firms need to think constantly in terms of new markets and new products, and often this is not possible within the confines of national borders. Firms are now looking increasingly to establish collaborative cross-border relationships in order to further their corporate strategy, and it is the duty of governments to establish the climate in which these relationships can flourish.

30 Over-restrictive screening and burdensome monitoring systems have no part to play in the support of such business objectives, and we urge Congress to take these considerations into account in any review of FDI.